

Exhibit A

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6 Attorneys for Plaintiff
James R. Glidewell Dental Ceramics, Inc.
7 d/b/a Glidewell Laboratories

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 SOUTHERN DIVISION

11 JAMES R. GLIDEWELL DENTAL
12 CERAMICS, INC.,

13 Plaintiff,

14 vs.

15 KEATING DENTAL ARTS, INC.,

16 Defendant.

17 AND RELATED
18 COUNTERCLAIMS.

Case No. SACV11-01309-DOC(ANx)

**DECLARATION OF GREGORY
DONEFF, D.D.S., IN SUPPORT OF
PLAINTIFF'S MOTIONS FOR
SUMMARY JUDGMENT**

Hearing

Date: December 17, 2012
Time: 8:30 a.m.
Ctmm: 9D, Hon. David O. Carter

Pre-Trial Conf.: January 28, 2013
Jury Trial: February 26, 2013

1 I, Gregory Doneff, D.D.S., declare as follows:

2 1. I am over the age of eighteen years old and unless otherwise indicated,
3 I state the following of my own personal knowledge and, if called upon to do so, I
4 could and would testify competently to the following.

5 2. I practice general dentistry in Dunwoody, Georgia. I received my
6 Doctor of Dental Surgery degree from Creighton University in 1997. I have been
7 practicing general dentistry since 1998 and have been restoring teeth with various
8 types of crowns and bridges since 1998.

9 3. Since prior to August 2009, I have regularly received Glidewell
10 Laboratories's ("Glidewell Labs") promotional material for Glidewell Labs's
11 BRUXZIR brand zirconia crowns and bridges. I first became aware of Glidewell
12 Labs's BRUXZIR brand zirconia crowns and bridges in 2009 through direct
13 mailers I received from Glidewell. Further, since 2009, I have seen Glidewell
14 Labs's BRUXZIR brand zirconia crowns and bridges regularly advertised in
15 Glidewell Labs's catalog of products and I have regularly received direct mailing
16 from Glidewell Labs containing special offers for Glidewell Labs's BRUXZIR
17 brand zirconia crowns and bridges. I have been purchasing Glidewell Labs's
18 BRUXZIR brand zirconia crowns and bridges since on or about August 14, 2009
19 and continue to do so. Moreover, I attended the Chicago Dental Society Midwinter
20 Meeting in February 2010 and February 2011, where Glidewell Labs prominently
21 promoted its BRUXZIR brand zirconia crowns and bridges. Moreover, at both of
22 these conventions, I spoke with other dentists about Glidewell Labs's BRUXZIR
23 brand zirconia crowns and bridges. Since learning about Glidewell Labs's
24 BRUXZIR brand zirconia crowns and bridges in 2009, I have spoken with other
25 dentists, including Dr. Michiels, about the quality of Glidewell Labs's BRUXZIR
26 brand zirconia crowns and bridges.

27 4. Since learning about Glidewell Labs's BRUXZIR brand zirconia
28 crowns and bridges in 2009 and through the date of this declaration, I have known,

DECLARATION OF GREGORY DONEFF, D.D.S., ISO
PLAINTIFF'S MOTIONS FOR SUMMARY JUDGMENT
CASE NO. SACV11-01309-DOC(ANx)

1 and through my various communications with other dentists, I am aware that other
2 dentists have known, that the BRUXZIR mark is a brand or trademark that signifies
3 a single source of zirconia crowns and bridges and the zirconia material from which
4 those products are made. Since learning about Glidewell Labs's BRUXZIR brand
5 zirconia crowns and bridges in 2009 and through the date of this declaration, I have
6 known, and through my various communications with other dentists, I am aware
7 that other dentists have known, that the BRUXZIR mark is a brand or trademark
8 associated with Glidewell Labs.

9 5. Since learning about Glidewell Labs's BRUXZIR brand zirconia
10 crowns and bridges in 2009 and through the date of this declaration, I have known,
11 and through my various communications with other dentists, I am aware that other
12 dentists have known, that the BRUXZIR mark is a brand or trademark that signifies
13 that Glidewell Labs is the source of zirconia crowns and bridges marketed under
14 that trademark.

15 6. Since learning about Glidewell Labs's BRUXZIR brand zirconia
16 crowns and bridges in 2009 and through the date of this declaration, I have known,
17 and through my various communications with other dentists, I am aware that other
18 dentists have known, that the BRUXZIR mark is a brand or trademark that signifies
19 that Glidewell Labs is the source of zirconia material (from which zirconia crowns
20 and bridges is made) marketed under that trademark.

21 7. Both before and after September 2010, I, and other dentists with whom
22 I regularly communicate, use the term "bruxer" exclusively to refer to a person who
23 suffers from bruxism; i.e., habitual and destructive grinding of the teeth and
24 clenching of the jaw.

25 8. Both before and after September 2010, the terms "bruxer," "bruxer
26 crown," "bruxzir," and "bruxzir crown" are not terms that I, nor the dentists I
27 communicate with, use to refer to zirconia crowns and bridges as a type or category
28 of product. I have never used any of these terms to refer to zirconia crowns or

1 bridges as a type or category of product, and I have never heard any other dentist
2 use any of those terms for that purpose. Rather, both before and after I learned
3 about Glidewell Labs's BRUXZIR brand zirconia crowns and bridges in 2009,
4 when referring to zirconia crowns and bridges as a type or category of product
5 generally, I, and the dentists that I communicate with, use the terms "zirconia
6 crowns," "all zirconia crowns," "monolithic zirconia crowns," "full zirconia
7 crowns," or "solid zirconia crowns."

8 9. Since learning about Glidewell Labs's BRUXZIR brand zirconia
9 crowns and bridges in 2009 and through the date of this declaration, I have often
10 used the term BRUXZIR to identify zirconia crowns and bridges manufactured by
11 Glidewell Labs, because I understand that the BRUXZIR mark is a brand or
12 trademark that signifies that Glidewell Labs is the source of zirconia crowns and
13 bridges marketed under that trademark.

14 10. Since learning about Glidewell Labs's BRUXZIR brand zirconia
15 crowns and bridges in 2009 and through the date of this declaration, I have, and
16 continue to, strongly associate the BRUXZIR trademark with Glidewell Labs's
17 zirconia crowns and bridges and zirconia material because I have observed that
18 Glidewell has extensively promoted its zirconia crowns and bridges and zirconia
19 material under the BRUXZIR trademark.

20 11. I not only use Glidewell Labs's BRUXZIR brand zirconia crowns and
21 bridges to treat patients with bruxism, but I also use Glidewell Labs's BRUXZIR
22 brand zirconia crowns and bridges to treat patients without bruxism. I estimate that

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Dr. Gregory Doneff DDS

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1 at least 80% of the Glidewell Labs's BRUXZIR brand zirconia crowns and bridges
2 that I install are for patients without bruxism.

3
4 I declare under penalty of perjury under the laws of the United States of
5 America that the foregoing is true and correct. Executed this 15 day of November,
6 2012, at Dunwoody, Georgia.

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8 
9 Gregory Doneff, D.D.S.

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DECLARATION OF GREGORY DONEFF, D.D.S., ISO
PLAINTIFF'S MOTIONS FOR SUMMARY JUDGMENT
CASE NO. SACV11-01309-DOC(ANx)

Exhibit A

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Exhibit B

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12 d/b/a Glidewell Laboratories

13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA
15 SOUTHERN DIVISION

16 JAMES R. GLIDEWELL DENTAL
17 CERAMICS, INC.,

18 Plaintiff,

19 vs.

20 KEATING DENTAL ARTS, INC.,

21 Defendant.

22 AND RELATED
23 COUNTERCLAIMS.

Case No. SACV11-01309-DOC(ANx)

**DECLARATION OF STUART R.
NEWMAN, D.D.S., IN SUPPORT OF
PLAINTIFF'S MOTIONS FOR
SUMMARY JUDGMENT**

Hearing

Date: December 17, 2012

Time: 8:30 a.m.

Ctrm: 9D, Hon. David O. Carter

Pre-Trial Conf.: January 28, 2013

Jury Trial: February 26, 2013

DECLARATION OF STUART R. NEWMAN, D.D.S., ISO
PLAINTIFF'S MOTIONS FOR SUMMARY JUDGMENT
CASE NO. SACV11-01309-DOC(ANx)

1 I, Stuart R. Newman, D.D.S., declare as follows:

2 1. I am over the age of eighteen years old and unless otherwise indicated,
3 I state the following of my own personal knowledge and, if called upon to do so, I
4 could and would testify competently to the following.

5 2. I practice general dentistry in New City, New York. I received my
6 Doctor of Dental Surgery degree from New York University in 1969. I have been
7 practicing general dentistry since 1969 and have been restoring teeth with various
8 types of crowns since 1969.

9 3. Since prior to August 2010, I have regularly received Glidewell
10 Laboratories's ("Glidewell Labs") promotional material for Glidewell Labs's
11 BRUXZIR brand zirconia crowns and bridges. I first became aware of Glidewell
12 Labs's BRUXZIR brand zirconia crowns and bridges prior to August 2010 through
13 direct mailers I received from Glidewell. Further, since prior to August 2010, I
14 have seen Glidewell Labs's BRUXZIR brand zirconia crowns and bridges regularly
15 advertised in dental publications and I have regularly received direct mailings from
16 Glidewell Labs containing special offers for Glidewell Labs's BRUXZIR brand
17 zirconia crowns and bridges. I have been purchasing Glidewell Labs's BRUXZIR
18 brand zirconia crowns and bridges since on or about August 5, 2010 and continue
19 to do so. Moreover, in October 2012, I toured Glidewell Labs's facilities in
20 California and saw the BRUXZIR mark prominently displayed and the milling
21 process for producing Glidewell Labs's BRUXZIR brand zirconia crowns and
22 bridges.

23 4. Since learning about Glidewell Labs's BRUXZIR brand zirconia
24 crowns and bridges prior to August 2010 and through the date of this declaration, I
25 have known that the BRUXZIR mark is a brand or trademark that signifies a single
26 source of zirconia crowns and bridges and the zirconia material from which those
27 products are made. Since learning about Glidewell Labs's BRUXZIR brand
28 zirconia crowns and bridges prior to August 2010 and through the date of this

DECLARATION OF STUART R. NEWMAN, D.D.S., ISO
PLAINTIFF'S MOTIONS FOR SUMMARY JUDGMENT
CASE NO. SACV11-01309-DOC(ANx)

- 1 -

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Exhibit B

-16-

1 declaration, I have known that the BRUXZIR mark is a brand or trademark
2 associated with Glidewell Labs.

3 5. Since learning about Glidewell Labs's BRUXZIR brand zirconia
4 crowns and bridges prior to August 2010 and through the date of this declaration, I
5 have known that the BRUXZIR mark is a brand or trademark that signifies that
6 Glidewell Labs is the source of zirconia crowns and bridges marketed under that
7 trademark.

8 6. Since learning about Glidewell Labs's BRUXZIR brand zirconia
9 crowns and bridges prior to August 2010 and through the date of this declaration, I
10 have known that the BRUXZIR mark is a brand or trademark that signifies that
11 Glidewell Labs is the source of zirconia material (from which zirconia crowns and
12 bridges are made) marketed under that trademark.

13 7. Both before and after August 2010, I have used and continue to use the
14 term "bruxer" exclusively to refer to a person who suffers from bruxism; i.e.,
15 habitual and destructive grinding of the teeth and clenching of the jaw.

16 8. Both before and after August 2010, the terms "bruxer," "bruxer
17 crown," "bruxzir," and "bruxzir crown" are not terms that I use to refer to zirconia
18 crowns and bridges as a type or category of product. I have never used any of these
19 terms to refer to zirconia crowns or bridges as a type or category of product.

20 Rather, both before and after August 2010, when referring to zirconia crowns and
21 bridges as a type or category of product generally, I use the term "zirconia crowns."

22 9. Both before and after August 2010, I have often used the term
23 BRUXZIR to identify zirconia crowns and bridges manufactured by Glidewell
24 Labs, because I understand that the BRUXZIR mark is a brand or trademark that
25 signifies that Glidewell Labs is the source of zirconia crowns and bridges marketed
26 under that trademark.

27 10. Both before and after August 2010, I have, and continue to, strongly
28 associate the BRUXZIR trademark with Glidewell Labs's zirconia crowns and

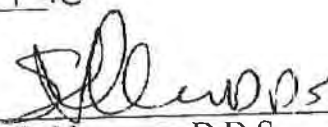
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1 bridges and zirconia material because I have observed that Glidewell has
2 extensively promoted its zirconia crowns and bridges and zirconia material under
3 the BRUXZIR trademark.

4 11. I not only use Glidewell Labs's BRUXZIR brand zirconia crowns and
5 bridges to treat patients with bruxism, but I also use Glidewell Labs's BRUXZIR
6 brand zirconia crowns and bridges to treat patients without bruxism. I regularly use
7 Glidewell Labs's BRUXZIR brand zirconia crowns and bridges for patients who
8 require a strong crown regardless of whether the patient suffers from bruxism.

9
10 I declare under penalty of perjury under the laws of the United States of
11 America that the foregoing is true and correct. Executed this 15 day of November,
12 2012, at New City, NY 10958

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15 Stuart R. Newman, D.D.S.

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DECLARATION OF STUART R. NEWMAN, D.D.S., ISO
PLAINTIFF'S MOTIONS FOR SUMMARY JUDGMENT
CASE NO. SACV11-01309-DOC(ANx)

Exhibit C

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10 Attorneys for Plaintiff
11 James R. Glidewell Dental Ceramics, Inc.
12 d/b/a Glidewell Laboratories

13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA
15 SOUTHERN DIVISION

16 JAMES R. GLIDEWELL DENTAL
17 CERAMICS, INC.,

18 Plaintiff,

19 vs.

20 KEATING DENTAL ARTS, INC.,
21 Defendant.

22 AND RELATED
23 COUNTERCLAIMS.

Case No. SACV11-01309-DOC(ANx)

**DECLARATION OF HOWARD S.
COHEN, D.D.S., IN SUPPORT OF
PLAINTIFF'S MOTIONS FOR
SUMMARY JUDGMENT**

Hearing

Date: December 17, 2012
Time: 8:30 a.m.
Ctmm: 9D, Hon. David O. Carter

Pre-Trial Conf.: January 28, 2013
Jury Trial: February 26, 2013

DECLARATION OF HOWARD S. COHEN, D.D.S., ISO
PLAINTIFF'S MOTIONS FOR SUMMARY JUDGMENT
CASE NO. SACV11-01309-DOC(ANx)

16133846

1 I, Howard S. Cohen, D.D.S., declare as follows:

2 1. I am over the age of eighteen years old and unless otherwise indicated,
3 I state the following of my own personal knowledge and, if called upon to do so, I
4 could and would testify competently to the following.

5 2. I practice general dentistry in Plano, Texas. I received my Doctor of
6 Dental Surgery degree from New York University College of Dentistry in 1967. I
7 have been practicing general dentistry since 1967 and have been restoring teeth
8 with various types of crowns and bridges since 1969.

9 3. Since prior to September 2010, I have regularly received Glidewell
10 Laboratories's ("Glidewell Labs") promotional material for Glidewell Labs's
11 BRUXZIR brand zirconia crowns and bridges. I first became aware of Glidewell
12 Labs's BRUXZIR brand zirconia crowns and bridges in late 2009 when Glidewell
13 sent me a BRUXZIR brand zirconia crown duplicate of the crown I ordered to
14 demonstrate the quality of Glidewell's BRUXZIR brand zirconia crown. Further,
15 in late 2009, I received an email from Glidewell Labs containing a promotional
16 video in which Glidewell Labs's BRUXZIR brand zirconia crown was hammered
17 into a piece of wood to demonstrate Glidewell Labs's BRUXZIR brand zirconia
18 crown's strength. Glidewell Labs pioneered the use of zirconia crowns. Further,
19 since I was first introduced to Glidewell Labs's BRUXZIR brand zirconia crowns
20 and bridges in 2009, I have regularly seen Glidewell Labs's BRUXZIR brand
21 zirconia crowns and bridges advertised in direct mailings to my office, the Journal
22 of the American Dental Association, and the Texas Dental Association Journal. I
23 have been purchasing Glidewell Labs's BRUXZIR brand zirconia crowns and
24 bridges since on or about October 22, 2010 and continue to do so. I regularly speak
25 with other dentists in my community about the quality of Glidewell Labs's
26 BRUXZIR brand zirconia crowns and bridges.

27 4. Since I learned of Glidewell's BRUXZIR brand zirconia crowns and
28 bridges in late 2009 and through the date of this declaration, I have known, and

DECLARATION OF HOWARD S. COHEN, D.D.S., ISO
PLAINTIFF'S MOTIONS FOR SUMMARY JUDGMENT
CASE NO. SACV11-01309-DOC(ANx)

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1 through my various communications with other dentists, I am aware that other
2 dentists have known, that the BRUXZIR mark is a brand or trademark that signifies
3 a single source of zirconia crowns and bridges and the zirconia material from which
4 those products are made. Since I learned of Glidewell's BRUXZIR brand zirconia
5 crowns and bridges in late 2009 and through the date of this declaration, I have
6 known, and through my various communications with other dentists, I am aware
7 that other dentists have known, that the BRUXZIR mark is a brand or trademark
8 associated with Glidewell Labs.

9 5. Since I learned of Glidewell's BRUXZIR brand zirconia crowns and
10 bridges in late 2009 and through the date of this declaration, I have known, and
11 through my various communications with other dentists, I am aware that other
12 dentists have known, that the BRUXZIR mark is a brand or trademark that signifies
13 that Glidewell Labs was the source of a zirconia crown or bridge marketed under
14 that trademark.

15 6. Since I learned of Glidewell's BRUXZIR brand zirconia crowns and
16 bridges in late 2009 and through the date of this declaration, I have known, and
17 through my various communications with other dentists, I am aware that other
18 dentists have known, that the BRUXZIR mark is a brand or trademark that signifies
19 that Glidewell Labs was the source of zirconia material (from which zirconia
20 crowns and bridges may be made) marketed under that trademark.

21 7. Both before and after learning of Glidewell Labs's BRUXZIR brand
22 zirconia crowns and bridges in late 2009, I, and other dentists with whom I
23 regularly communicate, use the term "bruxer" exclusively to refer to a person who
24 suffers from bruxism; i.e., habitual and destructive grinding of the teeth and
25 clenching of the jaw.

26 8. Both before and after learning of Glidewell Labs's BRUXZIR brand
27 zirconia crowns and bridges in late 2009, the terms "bruxer" and "bruxer crown"
28 are not terms that I, nor the dentists I communicate with, use to refer to zirconia

1 crowns and bridges as a type or category of product generally. Rather, both before
2 and after learning of Glidewell Labs's BRUXZIR brand zirconia crowns and
3 bridges in late 2009, when referring to zirconia crowns and bridges as a type or
4 category of product generally, I, and the dentists that I communicate with, use the
5 term "solid zirconia crowns." Moreover, I, and the dentists with whom I regularly
6 communicate, do not use the term "BRUXZIR" or "BRUXZIR crown" to identify
7 zirconia crowns other than those produced by Glidewell Labs or produced under the
8 authorization of Glidewell Labs.

9 9. Since learning of Glidewell Labs's BRUXZIR brand zirconia crowns
10 and bridges in late 2009 and through the date of this declaration, I have often used
11 the term BRUXZIR to identify zirconia crowns and bridges manufactured by
12 Glidewell Labs, because I understand that the BRUXZIR mark is a brand or
13 trademark that signifies that Glidewell Labs was the source of a zirconia crown or
14 bridge marketed under that trademark.

15 10. Since learning of Glidewell Labs's BRUXZIR brand zirconia crowns
16 and bridges in late 2009 and through the date of this declaration, I have, and
17 continue to, strongly associate the BRUXZIR trademark with Glidewell Labs's
18 zirconia crowns and bridges and zirconia material because I have observed that
19 Glidewell has extensively promoted its zirconia crowns and bridges and zirconia
20 material under the BRUXZIR trademark.

21 11. I not only use Glidewell Labs's BRUXZIR brand zirconia crowns and
22 bridges to treat patients with bruxism, but I also use Glidewell Labs's BRUXZIR
23 brand zirconia crowns and bridges to treat patients without bruxism. I estimate that

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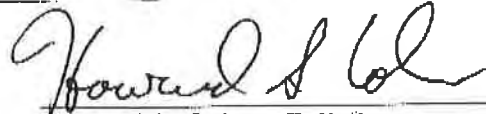
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1 at least 90% of the Glidewell Labs's BRUXZIR brand zirconia crowns and bridges
2 that I install are for patients without bruxism.

3
4 I declare under penalty of perjury under the laws of the United States of
5 America that the foregoing is true and correct. Executed this 15 day of November,
6 2012, at PLANO TEXAS

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9 Howard S. Cohen, D.D.S.

Snell & Wilmer

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DECLARATION OF HOWARD S. COHEN, D.D.S., ISO
PLAINIFF'S MOTIONS FOR SUMMARY JUDGMENT
CASE NO. SACV11-01309-DOC(AN8)

- 4 -

Exhibit D

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10 Attorneys for Plaintiff
11 James R. Glidewell Dental Ceramics, Inc.
12 d/b/a Glidewell Laboratories

13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA
15 SOUTHERN DIVISION

16 JAMES R. GLIDEWELL DENTAL
17 CERAMICS, INC.,

18 Plaintiff,

19 vs.

20 KEATING DENTAL ARTS, INC.,
21 Defendant.

22 AND RELATED
23 COUNTERCLAIMS.

Case No. SACV11-01309-DOC(ANx)

**DECLARATION OF SPENCER D.
LUKE, D.M.D., IN SUPPORT OF
PLAINTIFF'S MOTIONS FOR
SUMMARY JUDGMENT**

Hearing

Date: December 17, 2012
Time: 8:30 a.m.
Ctmm: 9D, Hon. David O. Carter

Pre-Trial Conf.: January 28, 2013
Jury Trial: February 26, 2013

DECLARATION OF SPENCER D. LUKE, D.M.D., ISO
PLAINTIFF'S MOTIONS FOR SUMMARY JUDGMENT
CASE NO. SACV11-01309-DOC(ANx)

1 I, Spencer D. Luke, D.M.D., declare as follows:

2 1. I am over the age of eighteen years old and unless otherwise indicated,
3 I state the following of my own personal knowledge and, if called upon to do so, I
4 could and would testify competently to the following.

5 2. I practice general dentistry in Salt Lake City, Utah. I received my
6 Doctor of Dental Medicine degree from Oregon Health & Science University in
7 2006. I have been practicing general dentistry since 2006 and have been restoring
8 teeth with various types of crowns and bridges since 2006.

9 3. In February 2012, I attended the Utah Dental Association Convention.
10 At this convention is when I first became aware of Glidewell Laboratories's
11 ("Glidewell Labs") BRUXZIR brand zirconia crowns and bridges. At this
12 convention, I attended a continuing education seminar where Dr. Michael DiTolla
13 gave a presentation on the strengths of Glidewell Labs's BRUXZIR brand zirconia
14 crowns and bridges. Further, at this convention, I spoke with other dentists about
15 Glidewell Labs's BRUXZIR brand zirconia crowns and bridges. Since attending
16 the Utah Dental Association Convention, I have noticed that I regularly receive
17 Glidewell Labs's promotional material for Glidewell Labs's BRUXZIR brand
18 zirconia crowns and bridges. Moreover, since then, I have regularly noticed
19 Glidewell Labs's BRUXZIR brand zirconia crowns and bridges advertised in the
20 leading dental magazines, including but not limited to, Dental Economics and
21 Dentistry Today. I have been purchasing Glidewell Labs's BRUXZIR brand
22 zirconia crowns and bridges since on or before March 2, 2012 and continue to do
23 so. Since the Utah Dental Association Convention in February 2012, I have spoken
24 with other dentists, including my own dentist, about the quality of Glidewell Labs's
25 BRUXZIR brand zirconia crowns and bridges.

26 4. Since February 2012 and through the date of this declaration, I have
27 known, and through my various communications with other dentists, I am aware
28 that other dentists have known, that the BRUXZIR mark is a brand or trademark

1 that signifies a single source of zirconia crowns and bridges and the zirconia
2 material from which those products are made. Since February 2012 and through
3 the date of this declaration, I have known, and through my various communications
4 with other dentists, I am aware that other dentists have known, that the BRUXZIR
5 mark is a brand or trademark associated with Glidewell Labs.

6 5. Since February 2012 and through the date of this declaration, I have
7 known, and through my various communications with other dentists, I am aware
8 that other dentists have known, that the BRUXZIR mark is a brand or trademark
9 that signifies that Glidewell Labs was the source of a zirconia crown or bridge
10 marketed under that trademark.

11 6. Since February 2012 and through the date of this declaration, I have
12 known, and through my various communications with other dentists, I am aware
13 that other dentists have known, that the BRUXZIR mark is a brand or trademark
14 that signifies that Glidewell Labs was the source of zirconia material (from which
15 zirconia crowns and bridges may be made) marketed under that trademark.

16 7. Both before and after February 2012, I, and the other dentists with
17 whom I regularly communicate, use the term “bruxer” exclusively to refer to a
18 person who suffers from bruxism, i.e. habitual and destructive grinding of the teeth
19 and clenching of the jaw.

20 8. Both before and after February 2012, the terms “bruxer,” “bruxer
21 crown,” “bruxzir,” and “bruxzir crown” are not terms that I, nor the dentists I
22 communicate with, use to refer to zirconia crowns and bridges as a type or category
23 of product. I have never used any of these terms to refer to zirconia crowns or
24 bridges as a type or category of product, and I have never heard any other dentist
25 use any of those terms for that purpose. Rather, both before and after February
26 2012, when referring to zirconia crowns and bridges as a type or category of
27 product generally, I, and the dentists that I communicate with, use the terms

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1 “zirconia crowns,” “all zirconia crowns,” “monolithic zirconia crowns,” “full
2 zirconia crowns,” or “solid zirconia crowns.”

3 9. Since February 2012 and through the date of this declaration, I have
4 often used the term BRUXZIR to identify zirconia crowns and bridges
5 manufactured by Glidewell Labs, because I understand that the BRUXZIR mark is
6 a brand or trademark that signifies that Glidewell Labs was the source of a zirconia
7 crown or bridge marketed under that trademark.

8 10. Since February 2012 and through the date of this declaration, I
9 strongly associate the BRUXZIR trademark with Glidewell Labs’s zirconia crowns
10 and bridges and zirconia material because I have observed that Glidewell has
11 extensively promoted its zirconia crowns and bridges and zirconia material under
12 the BRUXZIR trademark.

13 11. I not only use Glidewell Labs’s BRUXZIR brand zirconia crowns and
14 bridges to treat patients with bruxism, but I also use Glidewell Labs’s BRUXZIR
15 brand zirconia crowns and bridges to treat patients without bruxism. Not only do I
16 use Glidewell Labs’s BRUXZIR brand zirconia crowns and bridges on posterior
17 teeth, but also on anterior teeth.

18 12. I am aware that Keating Dental Arts, Inc. (“Keating”) offers a zirconia
19 crown, named “KDZ Bruxer,” that competes directly with the BRUXZIR brand
20 zirconia crowns offered by Glidewell Labs. I have received direct mailers from

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1 Keating, including coupon books advertising Keating's "KDZ Bruxer" zirconia
2 crowns at a discount price.
3

4 I declare under penalty of perjury under the laws of the United States of
5 America that the foregoing is true and correct. Executed this 15th day of November,
6 2012, at Salt Lake City, Utah.

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8 Spencer D. Luke, D.M.D.
9 Spencer D. Luke, D.M.D.
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DECLARATION OF SPENCER D. LUKE, D.M.D., ISO
PLAINTIFF'S MOTIONS FOR SUMMARY JUDGMENT
CASE NO. SACV11-01309-DOC(ANx)

- 4 -

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Exhibit D

Exhibit E

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10 Attorneys for Plaintiff
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12 d/b/a Glidewell Laboratories

13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA
15 SOUTHERN DIVISION

16 JAMES R. GLIDEWELL DENTAL
17 CERAMICS, INC.,

18 Plaintiff,

19 vs.

20 KEATING DENTAL ARTS, INC.,

21 Defendant.

22 AND RELATED
23 COUNTERCLAIMS.

Case No. SACV11-01309-DOC(ANx)

**DECLARATION OF THOMAS E.
BELL, D.M.D., IN SUPPORT OF
PLAINTIFF'S MOTIONS FOR
SUMMARY JUDGMENT**

Hearing

Date: December 17, 2012
Time: 8:30 a.m.
Ctmm: 9D, Hon. David O. Carter

Pre-Trial Conf.: January 28, 2013
Jury Trial: February 26, 2013

DECLARATION OF THOMAS E. BELL, D M D, ISO
PLAINTIFF'S MOTIONS FOR SUMMARY JUDGMENT
CASE NO. SACV11-01309-DOC(ANx)

1 I, Thomas E. Bell, D.M.D., declare as follows:

2 1. I am over the age of eighteen years old and unless otherwise indicated,
3 I state the following of my own personal knowledge and, if called upon to do so, I
4 could and would testify competently to the following.

5 2. I practice general dentistry in South Shore, Kentucky. I received my
6 Doctor of Dental Medicine degree from the University of Louisville in 2005. I
7 have been practicing general dentistry since 2005 and have been restoring teeth
8 with various types of crowns and bridges since 2005.

9 3. Since prior to September 2010, I have regularly received Glidewell
10 Laboratories's ("Glidewell Labs") promotional material for Glidewell Labs's
11 BRUXZIR brand zirconia crowns and bridges. I first became aware of Glidewell
12 Labs's BRUXZIR brand zirconia crowns and bridges in late 2009 through direct
13 mailers from Glidewell Labs. Since I first learned about Glidewell Labs's
14 BRUXZIR brand zirconia crowns and bridges in late 2009, I have regularly seen
15 Glidewell Labs's BRUXZIR brand zirconia crowns and bridges advertised on web
16 promotions, direct mailings to my office, and through direct contact with Glidewell
17 Labs and other labs authorized to make BRUXZIR brand zirconia crowns and
18 bridges. Further, I have completed continuing education seminars on Glidewell
19 Labs's website concerning its BRUXZIR brand zirconia crowns and bridges. I
20 have been purchasing Glidewell Labs's BRUXZIR brand zirconia crowns and
21 bridges since on or before October 23, 2010 and continue to do so. I regularly
22 speak with other dentists, including my former class mates, about the quality of
23 Glidewell Labs's BRUXZIR brand zirconia crowns and bridges.

24 4. Since I learned of Glidewell's BRUXZIR brand zirconia crowns and
25 bridges in late 2009 and through the date of this declaration, I have known, and
26 through my various communications with other dentists, I am aware that other
27 dentists have known, that the BRUXZIR mark is a brand or trademark that signifies
28 a single source of zirconia crowns and bridges and the zirconia material from which

DECLARATION OF THOMAS E. BELL, D.M.D., ISO
PLAINTIFF'S MOTIONS FOR SUMMARY JUDGMENT
CASE NO. SACV11-01309-DOC(ANx)

1 those products are made. Since I learned of Glidewell's BRUXZIR brand zirconia
2 crowns and bridges in late 2009 and through the date of this declaration, I have
3 known, and through my various communications with other dentists, I am aware
4 that other dentists have known, that the BRUXZIR mark is a brand or trademark
5 associated with Glidewell Labs.

6 5. Since I learned of Glidewell's BRUXZIR brand zirconia crowns and
7 bridges in late 2009 and through the date of this declaration, I have known, and
8 through my various communications with other dentists, I am aware that other
9 dentists have known, that the BRUXZIR mark is a brand or trademark that signifies
10 that Glidewell Labs was the source of a zirconia crown or bridge marketed under
11 that trademark.

12 6. Since I learned of Glidewell's BRUXZIR brand zirconia crowns and
13 bridges in late 2009 and through the date of this declaration, I have known, and
14 through my various communications with other dentists, I am aware that other
15 dentists have known, that the BRUXZIR mark is a brand or trademark that signifies
16 that Glidewell Labs was the source of zirconia material (from which zirconia
17 crowns and bridges are made) marketed under that trademark.

18 7. Both before and after learning of Glidewell Labs's BRUXZIR brand
19 zirconia crowns and bridges in late 2009, I, and the other dentists with whom I
20 regularly communicate, use the term "bruxer" exclusively to refer to a person who
21 suffers from bruxism; i.e., habitual and destructive grinding of the teeth and
22 clenching of the jaw.

23 8. Both before and after learning of Glidewell Labs's BRUXZIR brand
24 zirconia crowns and bridges in late 2009, the terms "bruxer," "bruxer crown,"
25 "bruxzir," and "bruxzir crown" are not terms that I, nor the dentists I communicate
26 with, use to refer to zirconia crowns and bridges as a type or category of product
27 generally. I have never used any of these terms to refer to zirconia crowns or
28 bridges as a type or category of product, and I have never heard any other dentist

1 use any of those terms for that purpose. Rather, both before and after learning of
2 Glidewell Labs's BRUXZIR brand zirconia crowns and bridges in late 2009, when
3 referring to zirconia crowns and bridges as a type or category of product generally,
4 I, and the dentists that I communicate with, use the terms "zirconia crowns," "all
5 zirconia crowns," "full zirconia crowns," or "solid zirconia crowns."

6 9. Since learning of Glidewell Labs's BRUXZIR brand zirconia crowns
7 and bridges in late 2009 and through the date of this declaration, I have often used
8 the term BRUXZIR to identify zirconia crowns and bridges manufactured by
9 Glidewell Labs, because I understand that the BRUXZIR mark is a brand or
10 trademark that signifies that Glidewell Labs was the source of a zirconia crown or
11 bridge marketed under that trademark.

12 10. Since learning of Glidewell Labs's BRUXZIR brand zirconia crowns
13 and bridges in late 2009 and through the date of this declaration, I have, and
14 continue to, strongly associate the BRUXZIR trademark with Glidewell Labs's
15 zirconia crowns and bridges and zirconia material because I have observed that
16 Glidewell has extensively promoted its zirconia crowns and bridges and zirconia
17 material under the BRUXZIR trademark.

18 11. I not only use Glidewell Labs's BRUXZIR brand zirconia crowns and
19 bridges to treat patients with bruxism, but I also use Glidewell Labs's BRUXZIR
20 brand zirconia crowns and bridges to treat patients without bruxism. I estimate that
21 at least 90% of the Glidewell Labs's BRUXZIR brand zirconia crowns and bridges
22 that I install are for patients without bruxism.

23 12. I am aware that Keating Dental Arts ("Keating") offers a zirconia
24 crown, named "KDZ Bruxer," that competes directly with the BRUXZIR brand
25 zirconia crowns offered by Glidewell Labs. Both Glidewell Labs and Keating
26 market their zirconia crowns to me and other dentists. I have received direct
27 mailings from Keating advertising its "KDZ Bruxer" zirconia crowns and bridges, I
28 saw Keating's promotional booth for its "KDZ Bruxer" zirconia crowns and bridges

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1 at a dental convention in Las Vegas, Nevada in April 2011, and I have viewed
2 Keating's advertisements for its "KDZ Bruxer" zirconia crowns and bridges on
3 Keating's website in 2012.

4
5 I declare under penalty of perjury under the laws of the United States of
6 America that the foregoing is true and correct. Executed this 16 day of November,
7 2012, at 2:45 PM at South Shore, Kentucky.

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Thomas E. Bell, D.M.D.

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DECLARATION OF THOMAS E. BELL, D.M.D., ISO
PLAINTIFF'S MOTIONS FOR SUMMARY JUDGMENT
CASE NO. SACV11-01309-DOC(ANX)

Exhibit F

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10 Attorneys for Plaintiff
11 James R. Glidewell Dental Ceramics, Inc.
12 d/b/a Glidewell Laboratories

13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA
15 SOUTHERN DIVISION

16 JAMES R. GLIDEWELL DENTAL
17 CERAMICS, INC.,

18 Plaintiff,

19 vs.

20 KEATING DENTAL ARTS, INC.,

21 Defendant.

22 AND RELATED
23 COUNTERCLAIMS.

Case No. SACV11-01309-DOC(ANx)

**DECLARATION OF KENT J. TOCA,
D.D.S., IN SUPPORT OF
PLAINTIFF'S MOTIONS FOR
SUMMARY JUDGMENT**

Hearing

Date: December 17, 2012

Time: 8:30 a.m.

Ctrm: 9D, Hon. David O. Carter

Pre-Trial Conf.: January 28, 2013

Jury Trial: February 26, 2013

DECLARATION OF KENT J. TOCA, D.D.S., ISO
PLAINTIFF'S MOTIONS FOR SUMMARY JUDGMENT
CASE NO. SACV11-01309-DOC(ANx)

Snell & Wilmer

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Los Angeles, California 90071
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1 I, Kent J. Toca, D.D.S., declare as follows:

2 1. I am over the age of eighteen years old and unless otherwise indicated,
3 I state the following of my own personal knowledge and, if called upon to do so, I
4 could and would testify competently to the following.

5 2. I practice general dentistry in Garden Grove, California. I received my
6 Doctor of Dental Surgery degree from the University of Southern California in
7 1992. I have been practicing general dentistry since 1992 and have been restoring
8 teeth with various types of crowns and bridges since 1992.

9 3. Since around September 2010, I have regularly received Glidewell
10 Laboratories's ("Glidewell Labs") promotional material for Glidewell Labs's
11 BRUXZIR brand zirconia crowns and bridges. I first became aware of Glidewell
12 Labs's BRUXZIR brand zirconia crowns and bridges in around September 2010
13 through direct mailers from Glidewell Labs. Further, since I was first introduced to
14 Glidewell Labs's BRUXZIR brand zirconia crowns and bridges in September 2010,
15 I have regularly seen Glidewell Labs's BRUXZIR brand zirconia crowns and
16 bridges advertised in direct mailings to my office and dental magazines. I have
17 visited Glidewell Labs's website and seen the BRUXZIR brand prominently
18 promoted there. For instance, I have watched a promotional video on Glidewell
19 Labs's website showing its BRUXZIR brand zirconia crown withstand being
20 pounded into a piece of wood by a hammer. I have been purchasing Glidewell
21 Labs's BRUXZIR brand zirconia crowns and bridges since on or about March 2,
22 2011 and continue to do so.

23 4. Since around September 2010 and through the date of this declaration,
24 I have known that the BRUXZIR mark is a brand or trademark that signifies a
25 single source of zirconia crowns and bridges and the zirconia material from which
26 those products are made. Since around September 2010 and through the date of this
27 declaration, I have known that the BRUXZIR mark is a brand or trademark
28 associated with Glidewell Labs.

DECLARATION OF KENT J. TOCA, D.D.S., ISO
PLAINTIFF'S MOTIONS FOR SUMMARY JUDGMENT
CASE NO. SACV11-01309-DOC(ANx)

- 1 -

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Exhibit F

1 5. Since around September 2010 and through the date of this declaration,
2 I have known that the BRUXZIR mark is a brand or trademark that signifies that
3 Glidewell Labs was the source of a zirconia crown or bridge marketed under that
4 trademark.

5 6. Since around September 2010 and through the date of this declaration,
6 I have known that the BRUXZIR mark is a brand or trademark that signifies that
7 Glidewell Labs was the source of zirconia material (from which zirconia crowns
8 and bridges may be made) marketed under that trademark.

9 7. Since before and after September 2010, I have used and continue to
10 use the term “bruxer” exclusively to refer to a person who suffers from bruxism, i.e.
11 habitual and destructive grinding of the teeth and clenching of the jaw.

12 8. Since around September 2010 and through the date of this declaration,
13 the terms “bruxer,” “bruxer crown,” “bruxzir,” and “bruxzir crown” are not terms
14 that I use to refer to zirconia crowns and bridges in general or to describe a type or
15 category of product. I have never used any of these terms to refer to zirconia
16 crowns or bridges in general or to describe a type or category of product. Rather,
17 since around September 2010 and through the date of this declaration, when
18 referring to zirconia crowns and bridges in general or to describe them as a type or
19 category of product, I use the term “solid zirconia crowns.”

20 9. Since around September 2010 and through the date of this declaration,
21 I have often used the term BRUXZIR to identify zirconia crowns and bridges
22 manufactured by Glidewell Labs, because I understand that the BRUXZIR mark is
23 a brand or trademark that signifies that Glidewell Labs was the source of a zirconia
24 crown or bridge marketed under that trademark.

25 10. Since around September 2010 and through the date of this declaration,
26 I strongly associate the BRUXZIR trademark with Glidewell Labs’s zirconia
27 crowns and bridges and zirconia material because I have observed that Glidewell

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1 has extensively promoted its zirconia crowns and bridges and zirconia material
2 under the BRUXZIR trademark.

3 11. I not only use Glidewell Labs's BRUXZIR brand zirconia crowns and
4 bridges to treat patients with bruxism, but I also use Glidewell Labs's BRUXZIR
5 brand zirconia crowns and bridges to treat patients without bruxism. In fact, I
6 almost exclusively use Glidewell Labs's BRUXZIR brand zirconia crowns and
7 bridges for posterior teeth that require a crown or bridge regardless of whether the
8 patient suffers from bruxism.

9
10 I declare under penalty of perjury under the laws of the United States of
11 America that the foregoing is true and correct. Executed this 17 day of November,
12 2012, at Yorba Linda, California

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16 Kent J. Toca, D.D.S.
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DECLARATION OF KENT J. TOCA, D.D.S., ISO
PLAINTIFF'S MOTIONS FOR SUMMARY JUDGMENT
CASE NO. SACV11-01309-DOC(ANx)

- 3 -

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EXHIBIT G

[FILED UNDER SEAL]

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13 d/b/a Glidewell Laboratories

14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA
16 SOUTHERN DIVISION

17 JAMES R. GLIDEWELL DENTAL
18 CERAMICS, INC.,

19 Plaintiff,

20 vs.

21 KEATING DENTAL ARTS, INC.,

22 Defendant.

23 AND RELATED
24 COUNTERCLAIMS.

Case No. SACV11-01309-DOC(ANx)

**DECLARATION OF JAMES SHUCK
IN SUPPORT OF JAMES R.
GLIDEWELL DENTAL CERAMICS,
INC.'S MOTIONS FOR SUMMARY
JUDGMENT**

Hearing

Date: December 17, 2012

Time: 8:30 a.m.

Ctrm: 9D, Hon. David O. Carter

Pre-Trial Conf.: January 28, 2013

Jury Trial: February 26, 2013

1 I, James Shuck, declare as follows:

2 1. I am Vice President of Sales and Marketing, of plaintiff James R.
3 Glidewell Dental Ceramics, Inc. d/b/a Glidewell Laboratories (“Glidewell”) and
4 have held this position since 1991. Glidewell is a California corporation with its
5 office located in Newport Beach, California. Unless otherwise stated, I have
6 personal and firsthand knowledge of the facts set forth in this declaration, and I
7 could and would testify competently to such facts if called as a witness.

8 2. I graduated from San Diego State University with a degree in biology
9 and started working in the dental business in 1976. I have been employed by
10 Glidewell since 1991.

11 3. As Vice President of Sales and Marketing at Glidewell, my job
12 responsibilities include sales and marketing of existing products, as well as new and
13 future products. I oversee approximately 45 people in both the sales and marketing
14 departments.

15 4. Glidewell is a leading provider of dental restoration products to
16 dentists. Among the products that Glidewell sells are dental crowns and bridges. A
17 crown is a type of dental restoration product that completely caps a tooth. It is
18 typically bonded to the tooth using dental cement or resin.

19 5. In the past, crowns were principally fashioned either from gold (which
20 has favorable tensile characteristics but is considered aesthetically unappealing by
21 many people) or from porcelain veneers fused to a metal casting (which is
22 aesthetically appealing but tends to crack when subjected to heavy pressure or
23 grinding). More recently, dental laboratories began to fashion crowns made of a
24 veneer fused or adhered to a hard ceramic such as zirconia. However, these crowns
25 too tended to crack when subjected to heavy grinding.

26 6. In 2008, I started developing the sales and marketing aspects of the
27 company’s new BruxZir brand product line. Among other things, I was involved in
28 naming the product, and developing marketing campaigns.

1 7. In early 2009, Glidewell was getting ready to launch its new BruxZir
2 brand solid zirconia crown. The product was intended to be unique from other
3 zirconia crown products then on the market. To my knowledge, before Glidewell's
4 BruxZir crown was launched in 2009, no other solid zirconia crown was
5 commercially available. As part of the product launch, we developed direct mail
6 pieces for dentists, mailed samples of BruxZir brand products to current customers
7 (we sent them samples whenever a metal restoration was requested so they could
8 use the BruxZir instead), email blasts to 125,000 dentists through the American
9 Dental Association's dentist listing, produced and posted Dr. DiTolla's, Glidewell's
10 Director of Clinical Education and Research, educational videos, and announced
11 continuing education programs for the product.

12 8. In coming up with the BruxZir brand, I circulated different name ideas
13 for the product to a group of dentists, both on staff and lecturers, to see which name
14 would work best from the perspective of dentists in the industry. I also had
15 Glidewell's Director of Clinical Education and Research, Dr. Michael DiTolla, ask
16 the audience at one of his lectures in June 2009 what they thought of the names.
17 After we got the results of these informal surveys, I decided on the name BruxZir.

18 9. I selected the name BruxZir as a composite of "brux" and "zir" in
19 order to suggest to relevant consumers (dentists) that BruxZir brand products are
20 strong and durable, and are suitable for use in applications requiring superior
21 strength and durability, such as for treating patients with bruxism. The name also
22 suggests that the products comprise zirconia, a hard and durable material
23 successfully used in other dental products. Upon introduction, BruxZir brand
24 crowns were the first dental crown that was indicated for someone with
25 parafunctional habits, such as bruxism, as well as for other indications.

26 10. The initial disadvantage of the BruxZir brand crown was that zirconia
27 is an unattractive material, due to its extreme whiteness and lack of translucency.
28 Ultimately, Glidewell partially overcame the aesthetic challenges of the material,

1 devising a process for fabricating a full contour zirconia crown that was sufficiently
2 appealing that it could be used in a variety of applications.

3 11. I received additional outside confirmation of our strong brand
4 recognition when I received an email on November 26, 2011 from Catherine
5 Bonser from Dentsply about brand research Dentsply did in 2010 about fixed
6 products brands, referring to crowns and bridges. She told me that she was
7 impressed that after being in the market for essentially six month at the time the
8 study was fielded Glidewell achieved this level of recognition. A true and correct
9 copy of this email is attached as Exhibit 6 to the concurrently filed Appendix of
10 Evidence in Support of James R. Glidewell Dental Ceramics, Inc.'s Motions for
11 Summary Judgment (hereinafter, "Appendix of Evidence"). Dentsply is the second
12 largest dental company in the United States and manufacturer of ceramic products.
13 Ms. Bonser and Dentsply were trying to identify what brands are recognized by
14 dentists and laboratories. The results of Dentsply's research indicated that
15 Glidewell's BruxZir mark had a high degree of recognition among dentists and
16 dental laboratories in the U.S.

17 12. I knew that BruxZir brand crowns were the number-one prescribed
18 brand of solid zirconia dental crowns as of March 2012 because a zirconia
19 suppliers' report showed that Glidewell's zirconia purchases for crowns under its
20 BruxZir mark were significantly more than the nearest competitor.

21 13. In order to designate our crowns as authentic and genuine BruxZir
22 brand solid zirconia, we put a four colored sticker on every case. A true and correct
23 copy of such stickers is attached as Exhibit 7 to the Appendix of Evidence.

24 14. The generic terms for a BruxZir brand crown are "crown," "crown for
25 bruxers," or "all zirconia crown." I have also heard a "solid zirconia crown," and a
26 "full contour zirconia crown." The term "bruxzir" is not used by Glidewell – or, to
27 my knowledge, widely or generally used by anyone else – to refer to solid zirconia
28 crowns.

15. Glidewell's primary customers for BruxZir brand crown and bridge products are dentists throughout the United States. It is my understanding that Keating Dental Arts, Inc. also sells dental crowns throughout the United States, and that Keating and Glidewell target to the same group of potential buyers: dentists and dental laboratories. It is also my understanding that Keating commenced marketing its competing goods under its KDZ Bruxer mark in May 2011. By that time, Glidewell had already spent approximately REDACTED in direct marketing costs promoting its BruxZir brand crowns.

16. Glidewell's crowns are sold at a comparable price point to Keating's crowns, Glidewell's BruxZir brand crowns are sold for \$99 and Keating's KDZ Bruxer crowns are sold for \$139.

17. Glidewell produces about REDACTED BruxZir brand crowns per week. This represents about REDACTED of all crowns made by Glidewell. We currently have approximately REDACTED BruxZir customers. In total, we have approximately REDACTED customers overall.

18. Dentists are not likely to consider the BruxZir mark and the KDZ mark side by side because the products are not sold like goods on a shelf in a store, you have to specially order them.

19. Glidewell has advertised the BruxZir brand crown and bridge products, given their strength and durability, as being ideal for patients suffering from bruxism, who tend to destroy other dental restorations through grinding and clenching. Glidewell has also advertised BruxZir brand crown and bridge products as "More brawn and improving beauty," with no mention of treating bruxism. A true and correct copy of the advertisement is attached as Exhibit 8 to the Appendix of Evidence.

20. As discussed in more detail below, since the introduction of the BruxZir brand in 2009, Glidewell has consistently and regularly advertised and

1 marketed the BruxZir brand product line, in association with the Glidewell Labs
2 name, in the following ways:

- 3 • BruxZir.com (a true and correct copy of a representative web shot of
4 BruxZir.com is attached as Exhibit 9 to the Appendix of Evidence);
- 5 • Glidewell's blog (true and correct copies of pages from the BruxZir
6 blog advertising BruxZir product are attached as Exhibit 10 to the
7 Appendix of Evidence);
- 8 • Press releases (a true and correct copy of a press release on PR Web
9 introducing BruxZir is attached as Exhibit 11 to the Appendix of
10 Evidence);
- 11 • Patient education brochures, doctor brochures, and custom brochures
12 (true and correct copies of such BruxZir marketing materials are
13 attached as Exhibit 12 to the Appendix of Evidence);
- 14 • Packing stickers distributed to authorized labs;
- 15 • Videos and DVDs;
- 16 • Dental publications;
- 17 • Direct mailers (a true and correct copy of representative direct mailers
18 are attached as Exhibit 13 to the Appendix of Evidence);
- 19 • Email blasts (a true and correct copy of representative email blasts are
20 attached as Exhibit 14 to the Appendix of Evidence);
- 21 • Trade shows; and
- 22 • Specialized prescription forms sent out quarterly to dentists. A true
23 and correct copy of a Glidewell prescription form is attached as
24 Exhibit 17 to the Appendix of Evidence.

25 21. BruxZir.com received approximately 289,210 unique pageviews
26 between October 2009 and November 2012. Of this volume, 78% was from U.S.
27 traffic. As a point of reference, there are approximately 125,000 dentists in the
28 United States.

1 22. Glidewell regularly and consistently advertises the BruxZir brand
2 product line, in association with the Glidewell Labs name, in dental industry
3 publications, including *ADA News*, *Chairside Magazine*, *Dental Economics*, *Dental*
4 *Lab Reports*, *Dentaltown*, *Dental Tribune*, *Dentistry Today*, *Inclusive Magazine*,
5 the *Journal of Dental Technology*, and *Lab Management Today*. True and correct
6 copies of a print advertisement for BruxZir brand products, representative of what
7 was run in such publications, are attached as Exhibit 18 and Exhibit 19 to the
8 Appendix of Evidence. Glidewell runs a print ad in *ADA News* once a month and
9 frequently advertises in the other magazines. Glidewell selects these publications
10 because of their wide readership and ability to reach thousands, if not hundreds of
11 thousands, of dentists and dental laboratories.

12 23. Glidewell consistently sends out e-mail blasts approximately quarterly
13 to U.S. dentists and dental laboratories, advertising Glidewell's BruxZir branded
14 product line, in association with the Glidewell Labs name. These blasts are sent to
15 Glidewell's internal e-mail list, which contains approximately 24,000 dentists.
16 Glidewell also uses the American Dental Association's e-mail list, which has about
17 89,000 dentists.

18 24. Glidewell consistently conducts quarterly direct mail advertising for
19 BruxZir branded crowns, in association with the Glidewell Labs name. For this
20 direct mail advertising, Glidewell uses a list, purchased from the American Dental
21 Association, of approximately 125,000 dentists.

22 25. Glidewell regularly and consistently provides sample BruxZir brand
23 crowns, in association with the Glidewell Labs name, as part of its marketing
24 efforts. These samples are distributed to both current customers and prospective
25 customers, from our dentist database available through the American Dental
26 Association. It is Glidewell's regular practice to ensure that such samples are
27 accompanied by packaging, literature, or other express means of identifying the
28 samples as BruxZir brand products originating from Glidewell.

26. As Vice President of Sales and Marketing, I ensure that Glidewell personnel regularly and consistently attends dozens of trade shows and conventions a year around the country, especially the American Dental Association conventions. At these conventions and trade shows, which are attended by, in the aggregate, thousands of dentists, Glidewell consistently and prominently displays the BruxZir brand, in association with the Glidewell Labs name, in a wide variety of contexts, including on the booth, the signage, in brochures, takeaways, and product displays and demonstrations. The conventions and trade shows at which Glidewell has promoted the BruxZir brand in this fashion include:

Dates	Convention	Location
2009		
July 8-12	AGD	Baltimore MD
Aug 20-22	Int'l Congress of Oral Implantologists	Vancouver Can
Sept 11-13	California Dental Association Fall	San Francisco CA
Sept 30-Oct 4	American Dental Association	Honolulu HI
Oct 14-17	American Society of Dental Aesthetics	Hollywood CA
Nov 4-6	American College of Prosthodontists	San Diego CA
Nov 11-15	American Academy of Implant Dentistry	New Orleans
Nov 12-14	The Madow Group TBSE	Las Vegas NV
Nov 29-Dec 2	Greater New York Dental Meeting	New York NY
Dec 4-6	AAOMS Implant Symposium	Chicago, IL
2010		
Jan 26-31	Yankee Dental	Boston, MA
Feb 25-27	Chicago Midwinter	Chicago, IL
Feb 27	Lab Day Chicago	Chicago, IL
Mar 4-6	Academy of Osseointegration	Orlando, FL
Mar 25-27	Hinman Dental	Atlanta, GA

1	April 15-17	Townie Meeting	Las Vegas NV
2	May 08	Lab Day West	Garden Grove, CA
3	May 14-16	California Dental Association Spring	Anaheim, CA
4	June 4-6	AADSM	San Antonio, TX
5	June 10-12	Quint. Perio, Restorative & Implant	Boston, MA
6	June 24-26	Academy of Sports Dentistry	Washington, DC
7	Aug 26-28	Cerec 25th Anniversary	Las Vegas NV
8	Oct 9-12	American Dental Association	Orlando, FL
9	Oct 20-24	American Academy of Implant Dentistry	Boston, MA
10	Nov 26-Dec 1	Greater New York Dental Meeting	New York NY
11	Dec 2-5	AAOMS Implant Symposium	Chicago, IL
12			
13			
14	2011		
15	Jan 27-29	Yankee Dental	Boston, MA
16	Feb 10-12	ICOI Winter Symposium	Las Vegas, NV
17	Feb 24-26	Chicago Midwinter	Chicago, IL
18	Feb 25-26	LMT Lab Day Chicago	Chicago, IL
19	Feb 25	Cal Lab Chicago	Chicago, IL
20	Mar 03	American Student Dental Assoc - ASDA	Anaheim, CA
21	Mar 4-6	Academy of Osseointegration	Washington, DC
22	Mar 24-26	Hinman Dental	Atlanta, GA
23	May 4-7	Townie Meeting	Las Vegas, NV
24	May 6-7	LMT Lab Day West	Garden Grove, CA
25		California Dental Association Spring	Anaheim, CA
26	May 12-14	USC Vendor Fair	Los Angeles, CA
27	May 19	American Academy of Dentist Sleep Medicine	Minneapolis, MN
28	June 10-12	Pacific Dental XP	Los Angeles, CA
	June 10-12	Academy of Sports Dentistry	Las Vegas, NV
	June 22-25		

July 15-16	Cerec 3rd Annual Symposium	Scottsdale, AZ
July 28-30	Academy of General Dentistry	San Diego, CA
Sept 22-24	California Dental Association	San Francisco, CA
Oct 10-12	American Dental Association	Las Vegas, NV
Oct 19-22	American Academy of Implant Dentistry	Las Vegas, NV
Nov 18-19	DLOAC Symposium and Expo	Pasadena, CA
Nov 27-30	Greater New York Meeting	New York, NY
Dec 1-4	AAOMS Implant Symposium	Chicago, IL
Dec 11	Chinese American Dental Society of So. Cal	Anaheim, CA
2012		
January 11	UCLA Vendor Fair	Los Angeles, CA
January 26-28	Yankee Dental Congress	Boston, MA
February 16-18	ICOI Winter Symposium	San Diego, CA
February 23-25	Chicago Midwinter Meeting	Chicago, IL
February 24-25	LMT Lab Day Chicago	Chicago, IL
February 24	Cal-Lab Chicago	Chicago, IL
March 1-3	Academy of Osseointegration	Phoenix, AZ
March 22-24	Hinman Dental Meeting	Atlanta, GA
March 23-24	Colorado Dental Lab Association	Lakewood, CO
April 25-28	Townie Meeting	Las Vegas, NV
May 3-5	California Dental Association Spring	Anaheim, CA
May 4-5	LMT Lab Day West	Garden Grove, CA
May 18-20	Pacific Dental XP 2011	Los Angeles, CA

June 7-9	American Academy of Dental Sleep Medicine	Boston, MA
June 21-23	Academy of General Dentistry - AGD	Philadelphia, PA
June 21-23	Academy of Sports Dentistry	Minneapolis, MN
July 21-22	NDA - Multi-Cultural Oral Health Summit	Boca Raton, FL
Aug. 16-18	Cerec - 27.5	Las Vegas, NV
Sept 10-15	AAOMS Annual Meeting	San Diego, CA
Sept 20-22	ICOI World Congress XXIX	Orlando, FL
Sept 29-Oct 2	American Academy of Periodontology (AAP)	Los Angeles, CA
October 3-6	American Academy of Implant Dentistry	Washington, DC
October 18-21	American Dental Association	San Francisco, CA
October 25-26	American Academy of Small Diameter Implants	Fort Worth, TX
November 16-18	DLOAC - CAD/CAM Exposition and Symposium	Garden Grove, CA

27. As part of Glidewell's marketing efforts for the BruxZir brand, Glidewell's Director of Clinical Education and Research, Dr. Michael DiTolla, made a series of educational videos in 2009 and 2010, and he made a compendium of all videos with a new introduction in 2011. The videos explain and illustrate various features and benefits of BruxZir brand products. These videos prominently feature the BruxZir brand in association with the Glidewell Labs name. The videos are publicly available on Glidewell's website and YouTube channel. BruxZir's video pages have had approximately 30,000 unique pageviews between October 2009 and November 2012.

1 28. Additional promotion of the BruxZir brand, in association with the
2 Glidewell Labs name, occurs through Dr. DiTolla's published articles. In
3 particular, Dr. DiTolla has published articles prominently featuring the BruxZir
4 brand in such dental publications as *Dental Economics* and the *Dental Tribune*. A
5 true and correct copy of an article authored by Dr. DiTolla and published on
6 www.dental-tribune.com is attached as Exhibit 21 to the Appendix of Evidence. A
7 true and correct copy of an article authored by Dr. DiTolla's and published in
8 *Dental Economics* is attached as Exhibit 22 to the Appendix of Evidence.

9 29. Additionally, Glidewell's Vice President of Research and
10 Development, Robin Carden, regularly gives presentations on the zirconia
11 technology used in the BruxZir brand products. These presentations, which
12 prominently feature the BruxZir brand, in association with the Glidewell Labs
13 name, are given to laboratories. He has done approximately five presentations. A
14 true and correct copy of one of Mr. Carden's presentation delivered on January 3,
15 2012 is attached as Exhibit 24 to the Appendix of Evidence. Mr. Carden has also
16 written multiple articles and given multiple interviews regarding BruxZir brand
17 products and the technology incorporated therein. A true and correct copy of one
18 such interview is attached as Exhibit 25 to the Appendix of Evidence.

19 30. In addition, the BruxZir brand and BruxZir brand products have
20 attracted substantial third party recognition in the form of, for example, laudatory
21 articles. These articles, which my department tracks and monitors, include:

- 22 • Article about Dr. Gordan Christensen's comments regarding
23 BruxZir brand products, a true and correct copy is attached as
24 Exhibit 26 to the Appendix of Evidence;
- 25 • Acutech article on BruxZir brand restorations, a true and correct
26 copy is attached as Exhibit 27 to the Appendix of Evidence;

- 1 • Dental Arts Lab article on BruxZir brand restorations, a true and
- 2 correct copy is attached as Exhibit 28 to the Appendix of
- 3 Evidence;
- 4 • Keller Labs article on BruxZir brand crowns, a true and correct
- 5 copy is attached as Exhibit 29 to the Appendix of Evidence;
- 6 • Somer Dental Labs article on BruxZir brand crowns, a true and
- 7 correct copy is attached as Exhibit 30 to the Appendix of
- 8 Evidence;
- 9 • *Dental Economics* article on BruxZir brand crowns and bridges,
- 10 a true and correct copy is attached as Exhibit 31 to the Appendix
- 11 of Evidence;
- 12 • *Inside Dental Technology* article on BruxZir brand restorations,
- 13 a true and correct copy is attached as Exhibit 32 to the Appendix
- 14 of Evidence;
- 15 • *Substructures Magazine* article on BruxZir brand products, a
- 16 true and correct copy is attached as Exhibit 33 to the Appendix
- 17 of Evidence; and
- 18 • *Clinicians Report* article entitled “Emerging All-Ceramic
- 19 Restorations,” a true and correct copy is attached as Exhibit 34
- 20 to the Appendix of Evidence;
- 21 • Blog post entitled “BruxZir® vs. PFM: New Zirconia vs. the
- 22 Old Tried and True,” a true and correct copy is attached as
- 23 Exhibit 35 to the Appendix of Evidence;
- 24 • *Inside Dental Technology* article entitled “Moving to
- 25 Monolithic,” a true and correct copy is attached as Exhibit 36 to
- 26 the Appendix of Evidence;
- 27
- 28

- Article entitled “CEREC® Connect: A Welcomed Upgrade for CEREC Users” by Carlos A. Boudet, DDS, a true and correct copy is attached as Exhibit 37 to the Appendix of Evidence;
- Article entitled “Crowns and Fixed Prosthesis: State of the Art,” a true and correct copy is attached as Exhibit 38 to the Appendix of Evidence;

31. In addition to the articles cited above, Glidewell has received other recognition for its BruxZir brand crowns. This includes scientific validation from various studies including:

- BruxZir and Milled e.maxCAD June 2012 (first of over 100 posterior tooth-colored restoratives that showed no cracks, chips, breaks, wear, or staining after the first year);
- Zirconia vs. Porcelain Wear Study (degree of wear from zirconia four times less on opposing tooth enamel);
- BruxZir Solid Zirconia vs. Ceramco3-A Comparative Wear Study (BruxZir compared favorably to Ceramco3 with barely detectable wear);
- BruxZir Solid Zirconia v. IPS e.max Enamel Wear Test 2010 (BruxZir found to wear comparably with enamel and virtually identical to IPS e.max); and
- Antagonist Wear Study (BruxZir lower wear than Ceramco3).

32. In 2010, Glidewell was awarded the Best Product Innovation Award from Tosoh Corporation for the development of BruxZir brand solid zirconia dental restorations. According to its website (<http://www.tosoh.com/about/who-is-tosoh>), Tosoh Corporation is a Japanese chemical and specialty products and materials multinational group of companies employing more than 11,000 people. A true and correct copy of an article lauding this award is attached as Exhibit 41 to the Appendix of Evidence.

1 33. In 2011, Glidewell's BruxZir brand products were awarded the
2 *Journal of Dental Technology's* "Wow! 2011 Products Award." A true and correct
3 copy of the article mentioning the award is attached as Exhibit 42 to the Appendix
4 of Evidence.

5 34. In 2011, *Inside Dental Technology* named Glidewell's BruxZir brand
6 products an "iNavigator Top Pick." A true and correct copy of the publication is
7 attached as Exhibit 43 to the Appendix of Evidence.

8 35. Also in 2011, a *Clinicians Report* article recognized Glidewell's
9 BruxZir brand products as a 2011 Best Product. A true and correct copy of this
10 award is attached as Exhibit 44 to the Appendix of Evidence.

11 36. In 2012, Glidewell's BruxZir brand products were awarded the Pride
12 Institute's "Best of Class" Technology Award. Also in 2012, BruxZir brand was
13 named a semifinal candidate for Best New Material by Dental Excellence. A true
14 and correct copy of the list naming awardees is attached as Exhibit 45 to the
15 Appendix of Evidence.

16 37. Glidewell has approximately 42 people that make up its marketing
17 team. Those employees spend approximately twenty percent of their time working
18 on marketing and advertising of the BruxZir product line.

19 38. Glidewell's total marketing expenses for the BruxZir brand product
20 line from June 2009 through June 2012 are approximately REDACTED. This
21 represents approximately REDACTED of Glidewell's overall marketing budget. This figure
22 comprises the following expenses:

- 23 • Direct mail: REDACTED
- 24 • Magazine Ads: REDACTED
- 25 • Fulfillment: REDACTED
- 26 • Eblast/Banner Ads: REDACTED
- 27 • Video: REDACTED
- 28 • Samples: REDACTED

- BruxZir Summit: REDACTED

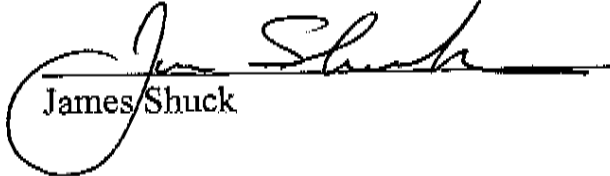
39. For the period June 2009 through June 2012, Glidewell's advertising and marketing expense for its BruxZir brand finished crowns and bridges totaled approximately REDACTED, while advertising and marketing expenses for the BruxZir brand zirconia milling blanks totaled approximately REDACTED. Advertising and marketing costs for the BruxZir branded product line have been steadily rising since the product launch in 2009.

40. Attached as Exhibit 46 to the Appendix of Evidence is a true and correct copy of a chart of monthly sales of BruxZir brand restorations compared to sales of porcelain fused to metal restorations that was compiled by my department.

41. Glidewell's total sales for BruxZir brand finished crowns and bridges from July 2009 to December 2009 equaled approximately REDACTED. Total sales of BruxZir brand finished crowns and bridges for 2010 equaled approximately REDACTED. Total sales of BruxZir brand finished crowns and bridges for 2011 equaled approximately REDACTED. Total sales of BruxZir brand finished crowns and bridges for from January 2012 to September 2012 equaled approximately REDACTED. Total sales of BruxZir brand finished crowns and bridges from July 2009 through September 2012 equaled approximately REDACTED. From June 2009 to September 2012, Glidewell has sold approximately 1.2 million dental crowns and bridges under the BruxZir brand.

42. As Vice President of Sales and Marketing, I ensure that Glidewell's marketing department regularly and periodically monitors trade publications and other marketing materials for competitors using Glidewell's BruxZir mark or any confusingly similar mark. It is the marketing department's practice to bring instances of potential infringement of the BruxZir mark to the attention of Keith Allred, Glidewell's General Counsel.

1 I declare under the penalty of perjury under the laws of the United States of
2 America that the foregoing is true and correct, and that this declaration was
3 executed on November 19, 2012, at NEWPORT BEACH, California.

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6 James Shuck
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Snell & Wilmer
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Exhibit H

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11 Attorneys for Plaintiff
12 James R. Glidewell Dental Ceramics, Inc.
13 d/b/a Glidewell Laboratories

14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA
16 SOUTHERN DIVISION

17 JAMES R. GLIDEWELL DENTAL
18 CERAMICS, INC.,

19 Plaintiff,

20 vs.

21 KEATING DENTAL ARTS, INC.,

22 Defendant.

23 AND RELATED
24 COUNTERCLAIMS.

Case No. SACV11-01309-D0C(ANx)

**DECLARATION OF RUDY
RAMIREZ IN SUPPORT OF JAMES
R. GLIDEWELL DENTAL
CERAMICS, INC.'S MOTIONS FOR
SUMMARY JUDGMENT**

Hearing

Date: December 17, 2012
Time: 8:30 a.m.
Ctmm: 9D, Hon. David O. Carter

Pre-Trial Conf.: January 28, 2013
Jury Trial: February 26, 2013

DECLARATION OF RUDY RAMIREZ ISO PLAINTIFF'S
MOTIONS FOR SUMMARY JUDGMENT
CASE NO. SACV11-01309 DOC (ANx)

1 I, Rudy Ramirez, declare as follows:

2 1. I am the General Manager of the Fixed Prosthodontics department of
3 plaintiff James R. Glidewell Dental Ceramics, Inc. d/b/a Glidewell Laboratories
4 ("Glidewell"). I am over the age of 18 years old and unless otherwise indicated, I
5 state the following of my own personal knowledge and, if called upon to do so, I
6 could and would testify competently to the following.

7 2. Glidewell is a California corporation with its office located in Newport
8 Beach, California. I have been employed by Glidewell for the last 30 years. Over
9 the last 25 years, although my job title has changed, I have had the same job
10 responsibilities and duties at Glidewell. As stated above, I am the General Manager
11 of the Fixed Prosthodontics department of Glidewell. The Fixed Prosthodontics
12 department of Glidewell produces Glidewell's BruxZir brand zirconia crowns and
13 bridges, as well as Glidewell's porcelain fused to metal ("PFM") crowns. My
14 responsibilities are to oversee the 450 employees in the Fixed Prosthodontics
15 department, ensure that the production quality of Glidewell's BruxZir brand
16 zirconia crowns and bridges and PFM crowns, produced from the Fixed
17 Prosthodontics department, are of consistent quality, and ensure that the Fixed
18 Prosthodontics department is profitable. Moreover, I regularly attend management
19 meetings in which research and development issues, long-term planning for
20 Glidewell, and marketing of Glidewell's various products are discussed.

21 3. I had an integral role in developing Glidewell's BruxZir brand zirconia
22 crowns and bridges. I worked closely with the research and development
23 department on the color solution and the post-mill processing for Glidewell's
24 BruxZir brand zirconia crowns and bridges. Moreover, I was responsible for
25 developing the best practices for repeatedly creating BruxZir brand zirconia crowns
26 and bridges of consistent quality throughout Glidewell's different departments and
27 laboratories.

28 4. Prior to deciding on the name BruxZir for Glidewell's zirconia crowns

1 and bridges, Glidewell management personnel held discussions to decide if
2 Glidewell should use the name BruxZir. During these discussions, I shared that I
3 favored the BruxZir name. I favored the BruxZir name because the term “brux”
4 suggests that the product is durable and very strong—strong enough even for an
5 individual who suffers from bruxism. Bruxism is the habitual and destructive
6 grinding of the teeth and clenching of the jaw. Such individuals require a crown
7 that is very durable and very strong. Moreover, “zir” suggests that the crown is
8 made of zirconia, a strong, non-metallic material that had been successfully used in
9 restorative dentistry. Glidewell’s zirconia crowns and bridges were intended for
10 any individual who needed an extremely strong and durable crown, and as an
11 alternative to traditional gold crowns. Thus, the name BruxZir, with its suggestive
12 allusions to durability, strength, and non-metallic zirconia, seemed like a good fit.
13 The product’s strength was one of the reasons why Glidewell initially marketed its
14 BruxZir brand zirconia crowns and bridges as “more brawn than beauty.”

15 5. The zirconia material that Glidewell uses for its BruxZir brand
16 zirconia crowns and bridges has always been marketed under the BruxZir brand
17 trademark.

18 6. As the general manager of the Fixed Prosthodontics department, I
19 regularly review and analyze Glidewell’s customer list and keep apprised of the
20 dentists that are ordering Glidewell’s BruxZir brand zirconia crowns and bridges.
21 The following doctors are either current or former customers of Glidewell’s
22 BruxZir brand zirconia crowns and bridges: Dr. William Belton, Dr. Jonathan
23 Campbell, Dr. Joseph Jacquinet, Dr. Terry L. Myers, Dr. Samir Rana, Dr. Stan
24 Richardson, Dr. Trevor Scheff, Dr. Scott Stephens, and Dr. Robert T. Wooten.

25 7. As the general manager of the Fixed Prosthodontics department, I am
26 regularly called upon to participate in guided tours of the Fixed Prosthodontics lab.
27 Glidewell regularly conducts about eight tours of its laboratories per month.
28 Because Glidewell’s BruxZir brand zirconia crowns have helped dentists stay in

1 business, dentists want to see how Glidewell produces its BruxZir brand zirconia
2 crowns and bridges. I regularly participate in around two to three lab tours for
3 dentists per month to provide details concerning the production of Glidewell's
4 BruxZir brand zirconia crowns and bridges. Through my participation in these
5 tours, I regularly interact with at least three dentists, and generally their assistants,
6 per month. I would estimate that, in total, since the launch of Glidewell's BruxZir
7 brand zirconia crowns and bridges over three and a half years ago, I have guided, at
8 a minimum, 108 dentists on tours of Glidewell's Fixed Prosthodontics lab.

9 8. The tours concerning the production of Glidewell's BruxZir brand
10 zirconia crowns and bridges have been taking place since the launch of Glidewell's
11 BruxZir brand zirconia crowns and bridges—over three and a half years ago. All of
12 the dentists that I have encountered on these tours have expressed to me their
13 awareness that Glidewell is the source for zirconia crowns and bridges produced
14 and marketed under the BruxZir mark. These dentists have been so impressed with
15 Glidewell's BruxZir brand zirconia crowns and bridges that they want to take the
16 tour to learn about Glidewell's BruxZir brand zirconia crowns and the process for
17 how Glidewell came up with its BruxZir brand zirconia crowns and bridges.

18 9. On these tours, I provide the dentists with the history of how
19 Glidewell's BruxZir brand zirconia crowns and bridges were developed and the
20 process for producing Glidewell's BruxZir brand zirconia crowns and bridges. I
21 explain how Glidewell's process for making BruxZir brand zirconia crowns and
22 bridges is different than other companies' processes for making solid zirconia
23 crowns and bridges, including explaining how Glidewell's BruxZir brand mills
24 operate. Further, I reinforce the dentists' already expressed awareness that the
25 BruxZir mark is a brand or trademark that signifies that Glidewell Labs is the
26 source of zirconia crowns and bridges marketed under that trademark by repeatedly
27 referencing that the source of the BruxZir brand zirconia crowns and bridges is
28 Glidewell. Further, there are numerous posters and pictures along the tour that

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1 unequivocally show Glidewell as the source of BruxZir brand zirconia crowns and
2 bridges. Further, I show the dentists finished BruxZir brand zirconia crowns and
3 bridges made at the Fixed Prosthodontics department of Glidewell.
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DECLARATION OF RUDY RAMIREZ ISO PLAINTIFF'S
MOTIONS FOR SUMMARY JUDGMENT
CASE NO. SACV11-01309 DOC (ANx)

- 5 -

16165281.2

Exhibit H

1 I declare under the penalty of perjury under the laws of the United States of
2 America that the foregoing is true and correct, and that this declaration was
3 executed on November 19, 2012, at NEWPORT BEACH, California.

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6 Rudy Ramirez
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Snell & Wilmer

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DECLARATION OF RUDY RAMIREZ ISO PLAINTIFF'S
MOTIONS FOR SUMMARY JUDGMENT
CASE NO. SACV11-01309 DOC (ANx)

- 6 -

16165281.2

Exhibit H

EXHIBIT I

[FILED UNDER SEAL]

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Attorneys for Plaintiff
7 James R. Glidewell Dental Ceramics, Inc.
d/b/a Glidewell Laboratories
8

9 UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
10 SOUTHERN DIVISION

11 JAMES R. GLIDEWELL DENTAL
12 CERAMICS, INC.,

13 Plaintiff,

14 vs.

15 KEATING DENTAL ARTS, INC.,

16 Defendant.

17 AND RELATED
18 COUNTERCLAIMS.

Case No. SACV11-01309-DOC(ANx)

**DECLARATION OF DR. MICHAEL
C. DITOLLA, IN SUPPORT OF
JAMES R. GLIDEWELL DENTAL
CERAMICS, INC.'S MOTIONS FOR
SUMMARY JUDGMENT**

Hearing

Date: December 17, 2012

Time: 8:30 a.m.

Ctrm: 9D; Hon. David O. Carter

Pre-Trial Conf.: January 28, 2013

Jury Trial: February 26, 2013

22
23 **HIGHLY CONFIDENTIAL - FILED UNDER SEAL**

24 **(PURSUANT TO PROTECTIVE ORDER DATED JANUARY 30, 2012)**

1 I, Dr. Michael C. DiTolla, declare as follows:

2 1. I am the Director of Clinical Education & Research at plaintiff James
3 R. Glidewell Dental Ceramics, Inc. d/b/a Glidewell Laboratories ("Glidewell") and
4 have held this position since 2001. Unless otherwise indicated, I state the following
5 of my own personal knowledge and, if called upon to do so, I could and would
6 testify competently to the following.

7 2. I graduated from the University of the Pacific School of Dentistry in
8 1988. From 1988 to 2001, I was a dentist in private practice. In 2001, I became the
9 Director of Clinical Education & Research at Glidewell, a position I currently hold.

10 3. I was awarded a Fellowship in the Academy of General Dentistry in
11 1995. I am also a graduate of the Las Vegas Institute of Cosmetic Dentistry and a
12 clinical evaluator for Dr. Gordon Christensen's Clinician's Report ("CR"). From
13 2001-2006, I was an instructor for PAC-Live's Live Patient Hands-on Veneer
14 Course. In 2011, I was awarded the 2011 Dr. Bicuspid Dental Excellence Award
15 for "Most Effective Dentist Educator."

16 4. At Glidewell, I am a clinical practitioner and one of my job duties is to
17 market and educate dentists and their staff about Glidewell's products and clinical
18 techniques. As part of this, I perform procedures on patients using Glidewell's
19 products, which are filmed for marketing and educational purposes. The filmed
20 procedures are put on DVDs that are mailed to dentists, and made into video clips
21 that are available on Glidewell's website (www.glidewelldental.com and
22 www.bruxzir.com), www.youtube.com, iTunes music store, and various other
23 dental websites that link to the videos on Glidewell's website. I am also
24 responsible for the content of these DVDs and videos. Glidewell has made
25 approximately 50 DVDs from the videos I have appeared in, and mailed
26 approximately 2 million copies of these DVDs to dentists. Of the DVDs I have
27 appeared in, approximately 3 to 4 were specifically directed at the BruxZir brand
28 crown. Of the online videos I have appeared in, approximately 3 to 4 were

1 specifically directed at the BruxZir brand crown. These DVDs and videos
2 consistently and prominently display the BruxZir brand in association with the
3 Glidewell Labs name.

4 5. Dentists contact me on a regular basis regarding the content of the
5 DVDs and videos I appear in. I receive approximately 1 to 2 e-mails a week, 3 to 5
6 phone calls a week, and 1 to 2 letters a month regarding these DVDs and videos. In
7 the last two years, approximately half of these communications have related to
8 BruxZir brand crowns. Attached as Exhibit 73 to the concurrently filed Appendix
9 of Evidence in Support of James R. Glidewell Dental Ceramics, Inc.'s Motions for
10 Summary Judgment (hereinafter, "Appendix of Evidence") are examples of e-mails
11 I receive from dentists regarding videos discussing the BruxZir brand crown.

12 6. I am also editor of Glidewell's magazine, *Chairside*. I have been
13 editor of the magazine since 2006. *Chairside* is published 4 times a year and each
14 issue is circulated to approximately 85,000 dentists by mail, and an electronic
15 version of the magazine is available on Glidewell's website. *Chairside* has
16 published approximately six articles regarding the BruxZir crown, and contains
17 advertisements for the BruxZir crown. The articles and advertisements in *Chairside*
18 consistently and prominently display the BruxZir brand in association with the
19 Glidewell Labs name.

20 7. I have also written articles regarding BruxZir brand crowns that have
21 been published in such dental publications as the *Dental Tribune* and *Dental*
22 *Economics*. A true and correct copy of an article I wrote for *Dental Tribune* is
23 attached as Exhibit 21 to the Appendix of Evidence. A true and correct copy of an
24 article I wrote for *Dental Economics* is attached as Exhibit 22 to the Appendix of
25 Evidence. As these articles show, the BruxZir mark is displayed in association with
26 the Glidewell Labs name.

27 8. I occasionally give dentists tours of Glidewell's laboratory. In this
28 past year, I have given approximately 30 dentists tours of Glidewell's laboratory.

1 The vast majority of dentists on these tours ask questions about the BruxZir brand
2 crown. During these tours, advertising and marketing materials prominently
3 displaying the BruxZir brand mark in connection with Glidewell's zirconia crowns
4 is typically present.

5 9. I also interact with dentists on various online message boards and
6 forums relating to the dental industry, including Facebook and
7 www.dentaltown.com. Over the past year, I have answered questions from
8 approximately 15 dentists on various online message boards and forums relating to
9 the BruxZir brand crown.

10 10. I also give approximately 35 lectures a year throughout the United
11 States on various dental topics. I have been giving lectures since 1995. During
12 these lectures, the audience size ranges from approximately 35 to 4,000 dentists.
13 On average, there are approximately 100 dentists at the lectures. On average, I will
14 have one on one interaction with approximately 35 dentists at a lecture. In the last
15 two years my lectures have covered a variety of topics, but I always incorporate
16 BruxZir brand crowns into the lectures in some form or another. In illustrations
17 and clinical videos involving the BruxZir brand crown presented during these
18 lectures, the BruxZir mark is typically present and displayed in association with the
19 Glidewell Labs name.

20 11. Due in large part to my job responsibilities at Glidewell and my
21 lectures, I interact with approximately two to three thousand dentists a year by
22 phone, e-mail, on various websites, and face to face. Over the past two years,
23 approximately half of my interactions with these dentists have involved inquiries
24 regarding the BruxZir brand crown. The vast majority of the two to three thousand
25 dentists I have interacted with regarding BruxZir have made statements to me
26 indicating that they understand that BruxZir identifies Glidewell as the source of
27 the crown products. By way of example, attached to the Appendix of Evidence as
28 Exhibit 74 are examples of e-mails I have received from dentists, which support my

1 conclusion that dentists understand that BruxZir identifies Glidewell as the source
2 of the crown products. In addition, I have never heard any of the thousands of
3 dentists I interact with use the term BruxZir or “bruxer” to refer to a zirconia crown
4 generally. Rather, when referring generally to a zirconia crown, dentists refer to the
5 crown as a zirconia crown. Based on the above, it is my opinion that the BruxZir
6 name has attained in the minds of dentists a strong identifying source with
7 Glidewell.

8 12. Based on the fact that in my 24 years as a dentist I have never used the
9 term “bruxer” to commonly refer to crowns, and the fact that I have never heard
10 any of the thousands of dentists I interact with a year use the term “bruxer” to
11 commonly refer to crowns, it is my opinion that “bruxer” is not a commonly used
12 term in the dental field for crowns. Instead, the term “bruxer” refers to an
13 individual who suffers from bruxism, a parafunctional activity in which a person
14 repeatedly and habitually grinds his teeth. I am not aware of any dictionaries or
15 other treatises that use the term “bruxer” to refer to crowns. I am also unaware of
16 any dictionaries or other treatises that use the term “bruxzir” to refer to crowns.
17 Attached to the Appendix of Evidence as Exhibit 75 are true and correct copies of
18 excerpts from multiple medical and dentist dictionaries confirming that “bruxer”
19 and “bruxzir” are not commonly recognized terms for crowns.

20 13. Jim Shuck, Glidewell’s Vice President of Sales and Marketing, came
21 up with the BruxZir name in or around June, 2009. After he thought of the BruxZir
22 name, Mr. Shuck sent me an e-mail asking what I thought of the name. At the time,
23 I was giving a lecture to a group of approximately 75 to 80 dentists. After I read his
24 email, I asked the group of dentists whether they thought the BruxZir name was
25 memorable. Most of them liked the name.

26 14. After Mr. Shuck told me the BruxZir name, I immediately liked it. I
27 thought BruxZir was a catchy, clever, and memorable name because it suggests to
28 dentists the identity of the material in the product—zirconia—through the use of the

1 term "Zir." This would allow dentists to compare the product to other types of
2 crowns, such as cast gold crowns and porcelain fused to metal crowns ("PFM"),
3 and know the difference between the crowns. In addition, the use of the term
4 "Brux" suggests to dentists that the product is strong and durable and can be used in
5 applications where a strong and durable crown is desirable, such as with a patient
6 with bruxism. I know from my frequent discussions with dentists, including many
7 Glidewell customers, however, that the vast majority of dentists do not limit their
8 use of BruxZir brand crowns to patients with bruxism, but instead use them in a
9 variety of situations when hard and durable crowns are needed, such as for patients
10 who have chipped or broken other porcelain restorations, or teeth with short clinical
11 crowns where less than one millimeter of reduction is possible.

12 15. I am familiar with Keating Dental Arts, Inc.'s ("Keating") KDZ
13 Bruxer crown. KDZ Bruxer crowns and BruxZir crowns are both used for patients
14 seeking hard and durable crowns, such as people suffering from bruxism.
15 However, like BruxZir brand crowns, dentists do not limit their use of the KDZ
16 Bruxer crown to patients with bruxism. Keating's advertisements for the KDZ
17 Bruxer crown are consistent with this. I have reviewed numerous Keating
18 advertisements for the KDZ Bruxer crown, and Keating does not use the word
19 "bruxer" to describe its own products (other than in its name). Nor does Keating
20 specify "bruxers" or "bruxism" as an indicated use of its products in the advertising
21 materials I have reviewed. Instead, the indicated use is much more general such as
22 for patients seeking "strength" and "esthetics." Attached to the Appendix of
23 Evidence as Exhibit 76 are true and correct copies of Keating's advertisements I
24 reviewed.

25 16. Based on my 24 years of experience as a dentist and my interactions
26 with thousands of dentists a year, it is my understanding that it is common for
27 dentists to have a dental assistant fill out information on a prescription form such as
28

1 a patient's information, product name (i.e. type of crown), tooth number, and shade,
2 and the dentists will sign the form.

3 17. To my knowledge, prior to Glidewell's use of the BruxZir mark, no
4 competitor had ever used "bruxzir" or "bruxer" as a name for dental crowns or
5 bridges.

6 18. In 2007, Glidewell began experimenting with a new type of crown,
7 made entirely of zirconia. The advantages of this new monolithic zirconia (or "full
8 contour zirconia") crown were that it would be extremely hard – sufficiently hard to
9 be used in applications requiring a material with high tensile and compressive
10 strength, including for patients with "bruxism," and that it could be milled from a
11 block of zirconia based on a digital representation of the patient's mouth. The
12 disadvantage was that zirconia is an unattractive material, due to its extreme
13 whiteness and lack of translucency. Ultimately, Glidewell was able to partially
14 overcome the aesthetic challenges of the material, devising a process for fabricating
15 a full contour zirconia crown that was sufficiently appealing that it could be used in
16 a variety of applications.

17 19. The BruxZir crown and KDZ Bruxer crown are not the only crowns
18 available to dentists who seek a strong and durable crown, such as one to stand up
19 to the stress of bruxism. For example, dentists also use cast gold crowns, other cast
20 metal crowns, and PFM with a metal occlusal for patients with bruxism. Each of
21 these crowns has advantages and disadvantages. The advantages of a cast gold
22 crown include strength, low wear on opposing teeth, and durability, and the
23 disadvantages include high cost and lack of esthetics. The advantages of other cast
24 metal crowns include strength, durability, and cheaper cost than cast gold, and the
25 disadvantages include lack of esthetics and more wear on opposing teeth than gold
26 cast. The advantages of a PFM crown with a metal occlusal include strength and
27 familiarity and predictability based on decades of use, and the disadvantages
28 include lack of esthetics. Attached as Exhibits 3 and 4 to the Appendix of Evidence

1 are advertisements from Glidewell, which visually compare a BruxZir brand crown
2 to a cast gold crown and a PFM with a metal occlusal crown. Although each of
3 these crowns are used by dentists for patients with bruxism, I have never heard a
4 dentist refer to any of them as “bruxers” or “bruxer crowns.”

5 20. Based upon my 24 years of experience as a dentist and interactions
6 with thousands of dentists a year, it is my experience that when ordering a crown
7 such as the BruxZir brand crown or KDZ Bruxer crown, dentists are not likely to
8 consider the BruxZir name and the KDZ Bruxer name side by side because the
9 products are not sold like goods on a shelf in a store, but instead must be specially
10 ordered. Dentists generally become familiar with a product like a crown based on
11 advertising, newsletters, journals, and speaking with their labs and other dentists,
12 where such products are rarely compared side by side.

13 21. Glidewell’s BruxZir brand crowns, Keating’s KDZ Bruxer crowns,
14 and other competitors’ full contour zirconia crowns have similar features and are
15 generally indicated for the same uses. Based upon my 24 years of experience as a
16 dentist and interactions with thousands of dentists a year, it is my experience that
17 many dentists may regard them as interchangeable.

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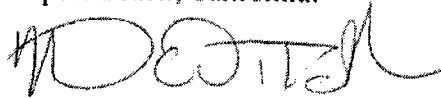
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1 I declare under the penalty of perjury under the laws of the United States of
2 America that the foregoing is true and correct.

3 Executed on November 19, 2012 in Newport Beach, California.

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6 Dr. Michael C. DiTolla
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Snell & Wilmer

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Exhibit J

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11 Attorneys for Plaintiff
12 James R. Glidewell Dental Ceramics, Inc.
13 d/b/a Glidewell Laboratories

14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA
16 SOUTHERN DIVISION

17 JAMES R. GLIDEWELL DENTAL
18 CERAMICS, INC.,

19 Plaintiff,

20 vs.

21 KEATING DENTAL ARTS, INC.,

22 Defendant.

23 AND RELATED
24 COUNTERCLAIMS.

Case No. SACV11-01309-DOC(ANx)

**DECLARATION OF ROBIN
CARDEN IN SUPPORT OF JAMES
R. GLIDEWELL DENTAL
CERAMICS, INC.'S MOTIONS FOR
SUMMARY JUDGMENT**

Hearing

Date: December 17, 2012
Time: 8:30 a.m.
Ctrm: 9D, Hon. David O. Carter

Pre-Trial Conf.: January 28, 2013
Jury Trial: February 26, 2013

1 I, Robin Carden, declare as follows:

2 1. I am Vice President of Research and Development, of plaintiff James
3 R. Glidewell Dental Ceramics, Inc. d/b/a Glidewell Laboratories ("Glidewell") and
4 have held this position since December 2011. I have personal knowledge of the
5 statements contained in this declaration.

6 2. I began working with Glidewell as a consultant in 2005. I was hired to
7 look at exploring solid zirconia as a material for dental products. I was familiar
8 with zirconia because of previous experience with zirconia ferrules, or connecting
9 devices, for fiber optics. Thus, beginning in 2005, I began developing for
10 Glidewell a new type of crown, a solid zirconia crown. In December 2009, I
11 became a full time employee and was named Senior Director of Research and
12 Development. In December 2011, I was promoted to my current position of Vice
13 President of Research and Development.

14 3. Since joining Glidewell, I have given multiple presentations on the
15 technical aspects of Glidewell's BruxZir brand products, namely the solid zirconia
16 technology used to make those products. I have given these presentations both
17 inside and outside of Glidewell. Some were open to the public, including the
18 BruxZir Summit, discussed below.

19 4. In particular, I gave a presentation regarding the technical aspects of
20 BruxZir brand products to an audience of approximately 800-900 people,
21 comprised of approximately 40 percent dentists and 60 percent dental lab
22 representatives, at the Cal-Lab 86th Annual Meeting, Chicago, Illinois, in February
23 2012 ("Chicago Dental Conference"). A true and correct copy of my presentation
24 at the Chicago Dental Conference, entitled "Why do Labs choose BruxZir Solid
25 Zirconia?," is attached as Exhibit 53 to the concurrently filed Appendix of Evidence
26 in Support of James R. Glidewell Dental Ceramics, Inc.'s Motions for Summary
27 Judgment (hereinafter, "Appendix of Evidence"). Both my presentation materials
28 and my verbal presentation prominently featured the BruxZir mark and promoted

1 its association with Glidewell and its products. Both my presentation materials and
2 my verbal presentation affirmatively distinguished Glidewell's BruxZir brand
3 products over other competitors' zirconia products. In particular, I explained the
4 technical features that make Glidewell's BruxZir brand products unique and
5 superior to its competitors' zirconia products, such as Dental Arts Laboratories,
6 Inc.'s PrismaTik Clinical Zirconia, Sagemax HT Zirconia, DOCERAM Zirconia,
7 AmannGirrbach Zirconia, Zirkon Zahn SPL Zirconia, and Dentsply's Cercon
8 Zirconia. I emphasized that these competitors' zirconia products are not made from
9 BruxZir brand products, and that only Glidewell supplies the BruxZir brand
10 products.

11 5. I gave a similar presentation regarding the technical aspects of BruxZir
12 brand products to an audience of approximately 200 dental lab representatives,
13 comprised of approximately 20 percent dentists and 80 percent dental lab
14 representatives, at the Dental Laboratory Owners Association of California
15 ("DLOAC") Expo and Symposium, Pasadena, California, in November 2011
16 ("Pasadena Dental Conference"). A true and correct copy of my presentation at the
17 Pasadena Dental Conference, entitled "Why do Labs choose BruxZir Solid
18 Zirconia?," is attached as Exhibit 67 to the concurrently filed Appendix of
19 Evidence. My presentation prominently featured the BruxZir mark and promoted
20 its association with Glidewell and its products. Both my presentation materials and
21 my verbal presentation affirmatively distinguished Glidewell's BruxZir brand
22 products over other competitors' zirconia products. In particular, I explained the
23 technical features that make Glidewell's BruxZir brand products unique and
24 superior to its competitors' zirconia products, such as Dental Arts Laboratories,
25 Inc.'s PrismaTik Clinical Zirconia, Sagemax HT Zirconia, DOCERAM Zirconia,
26 AmannGirrbach Zirconia, Zirkon Zahn SPL Zirconia, and Dentsply's Cercon
27 Zirconia. I emphasized that these competitors' zirconia products are not made from
28

1 BruxZir brand products, and that only Glidewell supplies the BruxZir brand
2 products.

3 6. I gave a presentation regarding the technical aspects of BruxZir brand
4 products to an audience of approximately 10 dental lab representatives at the
5 January 3, 2012 BruxZir Summit in Orange County, California ("BruxZir
6 Summit"). This BruxZir Summit takes place at Glidewell and is open to the public.
7 A true and correct copy of my presentation at this 2012 BruxZir Summit, titled
8 "BruxZir Zirconia Technology," dated January 3, 2012, is attached as Exhibit 24 to
9 the concurrently filed Appendix of Evidence. Both my presentation materials and
10 my verbal presentation prominently featured the BruxZir mark and promoted its
11 association with Glidewell and its products. Both my presentation materials and
12 my verbal presentation affirmatively distinguished Glidewell's BruxZir brand
13 products over other competitors' zirconia products. In particular, I explained the
14 technical features that make Glidewell's BruxZir brand products unique and
15 superior to its competitors' zirconia products, such as Dental Arts Laboratories,
16 Inc.'s PrismaTik Clinical Zirconia, Sagemax HT Zirconia, DOCERAM Zirconia,
17 AmannGirrbach Zirconia, Zirkon Zahn SPL Zirconia, and Dentsply's Cercon
18 Zirconia. I emphasized that these competitors' zirconia products are not made from
19 BruxZir brand products, and that only Glidewell supplies the BruxZir brand
20 products.

21 7. Since November 2011 and through the date of this declaration, through
22 my various communications with dentists and dental lab representatives at trade
23 shows, I am aware that dentists and dental lab representatives generally are aware
24 that the BruxZir mark is a brand or trademark that signifies a single source of
25 zirconia crowns and bridges and the zirconia material from which those products
26 are made.

27 8. Since November 2011 and through the date of this declaration, through
28 my various communications with dentists and dental lab representatives at trade

1 shows, I am aware that dentists and dental lab representatives generally are aware
2 that the BruxZir mark is a brand or trademark associated with Glidewell.

3 9. Since November 2011 and through the date of this declaration, through
4 my various communications with dentists and dental lab representatives at trade
5 shows, I am aware that dentists and dental lab representatives generally are aware
6 that the BruxZir mark is a brand or trademark that signifies that Glidewell was the
7 source of zirconia crown or bridge marketed under that trademark.

8 10. Since November 2011 and through the date of this declaration, through
9 my various communications with dentists and dental lab representatives at trade
10 shows, I am aware that dentists and dental lab representatives generally are aware
11 that the BruxZir mark is a brand or trademark that signifies that Glidewell was the
12 source of zirconia material (from which zirconia crowns and bridges may be made)
13 marketed under that trademark.

14 11. During my tenure at Glidewell, I have also published articles about
15 BruxZir brand products, including articles targeting patients, dentists, and dental
16 labs. In particular, I published an article discussing the technical aspects of BruxZir
17 brand products, entitled "BruxZir®: Virtually Bulletproof What Is It? Why Does it
18 Work," in *Inclusive Dental Driven Impact Solutions*, Volume 1, Issue 3, Summer
19 2010. A true and correct copy of this article is attached as Exhibit 54 to the
20 concurrently filed Appendix of Evidence. This article prominently features the
21 BruxZir mark and its association with Glidewell and its products.

22 12. I published an article discussing the technical aspects of BruxZir brand
23 products, entitled "Strength and Flexibility of BruxZir Solid Zirconia Implant
24 Restorations," in *Inclusive Dental Driven Impact Solutions*, Volume 3, Issue 2,
25 Summer 2012. A true and correct copy of this article is attached as Exhibit 55 to
26 the concurrently filed Appendix of Evidence. This article prominently features the
27 BruxZir mark and its association with Glidewell and its products.
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1 13. I wrote an article discussing the technical aspects of BruxZir brand
2 products, entitled "A Changing Direction In Dentistry: Full-Contour Zirconia,"
3 published in the *Journal of Dental Technology*, February 2011. A true and correct
4 copy of this article is attached as Exhibit 56 to the concurrently filed Appendix of
5 Evidence. This article prominently features the BruxZir mark and its association
6 with Glidewell and its products.

7 14. I wrote an article discussing the technical aspects of BruxZir brand
8 products, titled "Virtually Bulletproof," published in *Ceramic Industry: The*
9 *Exclusive Global Voice of Ceramic & Glass Business and Manufacturing*, on
10 December 1, 2010. A true and correct copy of this article is attached as Exhibit 57
11 to the concurrently filed Appendix of Evidence. This article prominently features
12 the BruxZir mark and its association with Glidewell and its products.

13 15. I gave an interview on BruxZir brand products, which was published
14 as a Q&A article in *Dental Products Report* (www.dentalproductsreport.com),
15 August 22, 2012. A true and correct copy of this Q&A article is attached as Exhibit
16 25 to the concurrently filed Appendix of Evidence. In this Q&A article, I also
17 discussed that BruxZir brand products have received industry recognition, including
18 being awarded the prestigious "Best Product Innovation Award" in the Advanced
19 Ceramic category by the Tosoh Corporation on in December 2010. The interview
20 prominently featured the BruxZir mark and its association with Glidewell and its
21 products.
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1 I declare under the penalty of perjury under the laws of the United States of
2 America that the foregoing is true and correct, and that this declaration was
3 executed on November 19th, 2012, at IRVINE, California.

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6 Robin Carden
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EXHIBIT K

[FILED UNDER SEAL]

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12 James R. Glidewell Dental Ceramics, Inc.
13 d/b/a Glidewell Laboratories

14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA
16 SOUTHERN DIVISION

17 JAMES R. GLIDEWELL DENTAL
18 CERAMICS, INC.,

19 Plaintiff,

20 vs.

21 KEATING DENTAL ARTS, INC.,

22 Defendant.

Case No. SACV11-01309-DOC(ANx)

**DECLARATION OF ROBIN
BARTOLO IN SUPPORT OF JAMES
R. GLIDEWELL DENTAL
CERAMICS, INC.'S MOTIONS FOR
SUMMARY JUDGMENT**

Hearing

Date: December 17, 2012

Time: 8:30 a.m.

Ctrm: 9D, Hon. David O. Carter

Pre-Trial Conf.: January 28, 2013

Jury Trial: February 26, 2013

23 AND RELATED
24 COUNTERCLAIMS.

HIGHLY CONFIDENTIAL - FILED UNDER SEAL

(PURSUANT TO PROTECTIVE ORDER DATED JANUARY 30, 2012)

1 I, Robin Bartolo, declare as follows:

2 1. I am Sales Manager for Glidewell Direct, a division of plaintiff James
3 R. Glidewell Dental Ceramics, Inc. d/b/a Glidewell Laboratories ("Glidewell"), and
4 have held this position since I joined Glidewell in January 2009. I have personal
5 knowledge of the statements contained in this declaration.

6 2. As Sales Manager for Glidewell Direct, my primary duties focus on
7 managing the sales of Glidewell products to current and potential customers, and
8 promoting Glidewell's Authorized BruxZir Lab program to dental labs.

9 3. In particular, Glidewell Direct focuses on the advertising, marketing,
10 and sales of Glidewell BruxZir brand products such as milling blanks, milling
11 machines, sintering machines, coloring kits, and other complementary products for
12 dental labs to fabricate BruxZir brand crowns.

13 4. As Sales Manager for Glidewell Direct, I regularly attend dental trade
14 shows that draw thousands of dentists and dental lab representatives from across the
15 United States. At these trade shows, I have consistently and actively promoted and
16 worked to establish Glidewell's BruxZir mark as an identifier of Glidewell as a
17 source of BruxZir brand zirconia crown and bridge products. In particular, since
18 joining Glidewell in January 2009, I have attended the following 17 trade shows:

19 (1) Lab Day West, May 9, 2009, Garden Grove, California, approximately 400
20 dental lab representatives in attendance; (2) California Dental Association ("CDA")
21 Dental Convention, May 13, 2009, Anaheim, California, approximately 6,000
22 dentists in attendance; (3) CDA Dental Convention, May 14-15, 2010, Anaheim,
23 California, approximately 6,000 dentists in attendance; (4) Lab Day West, May 8,
24 2010, Garden Grove, California, approximately 400 dental lab representatives in
25 attendance; (5) American Dental Association ("ADA") Annual Session, October 8-
26 10, 2010, Orlando, Florida, approximately 7,000 dentists in attendance; (6) Lab
27 Management Today ("LMT") Chicago Midwinter Meeting, February 23-26, 2011,
28 Chicago, Illinois, approximately 500 dental lab representatives in attendance; (7)

1 Lab Day West, May 7, 2011, Garden Grove, California, approximately 400 dental
2 lab representatives in attendance; (8) CDA Dental Convention, May 12, 2011,
3 Anaheim, California, approximately 6,000 dentists in attendance; (9) American
4 Academy of Dental Sleep Medicine Annual Meeting, June 12-16, 2011,
5 Minneapolis, Minnesota, approximately 2,000 dentists in attendance; (10) CDA
6 Dental Convention, October 9-11, 2011, San Francisco, California, approximately
7 5,000 dentists in attendance; (11) Dental Laboratory Owners Association of
8 California ("DLOAC") Expo and Symposium, November 17-18, 2011, Pasadena,
9 California, approximately 200 dental lab representatives in attendance; (12) LMT
10 Chicago Midwinter Meeting, February 22-25, 2012, Chicago, Illinois,
11 approximately 500 dental lab representatives in attendance; (13) Colorado Dental
12 Lab Association Meeting, March 23-24, 2012, approximately 30 dental lab
13 representatives in attendance; (14) CDA Dental Convention, May 3-4, 2012
14 Anaheim, California, approximately 6,000 dentists in attendance; (15) Lab Day
15 West, May 5, 2012, Garden Grove, California, approximately 400 dental lab
16 representatives in attendance; (16) ADA Annual Session, October 12-20, 2012, San
17 Francisco, California, approximately 8,700 dentists in attendance; and (17) DLOAC
18 Expo and Symposium, November 16-17, 2012, Anaheim, California, approximately
19 200 dental lab representatives in attendance.

20 5. Since January 2009 and through the date of this declaration, through
21 my various communications with dentists and dental lab representatives at trade
22 shows, I am aware that dentists and dental lab representatives generally are aware
23 that the BruxZir mark is a brand or trademark that signifies a single source of
24 zirconia crowns and bridges and the zirconia material from which those products
25 are made.

26 6. Since January 2009 and through the date of this declaration, through
27 my various communications with dentists and dental lab representatives at trade
28

1 shows, I am aware that dentists and dental lab representatives generally are aware
2 that the BruxZir mark is a brand or trademark associated with Glidewell.

3 7. Since January 2009 and through the date of this declaration, through
4 my various communications with dentists and dental lab representatives at trade
5 shows, I am aware that dentists and dental lab representatives generally are aware
6 that the BruxZir mark is a brand or trademark that signifies that Glidewell was the
7 source of zirconia crown or bridge marketed under that trademark.

8 8. Since January 2009 and through the date of this declaration, through
9 my various communications with dentists and dental lab representatives at trade
10 shows, I am aware that dentists and dental lab representatives generally are aware
11 that the BruxZir mark is a brand or trademark that signifies that Glidewell was the
12 source of zirconia material (from which zirconia crowns and bridges may be made)
13 marketed under that trademark.

14 9. As Sales Manager for Glidewell Direct, I have become familiar with
15 Glidewell's competitors and products, including those of Keating Dental Arts. To
16 the best of my knowledge, Keating does not sell zirconia milling blanks, milling
17 machines, sintering machines, coloring kits, and other complementary products to
18 dental labs. Thus, Keating generally is not a competitor in the market that
19 Glidewell Direct targets: specifically, the dental lab market.

20 10. As part of my duties and responsibilities as Sales Manager for
21 Glidewell Direct, I am occasionally involved with communicating via telephone
22 with dental lab representatives who may be infringing on Glidewell's BruxZir mark.
23 In such telephone communications, I explained that Glidewell owns the federally
24 registered BruxZir trademark for dental crowns and other dental restoration
25 products, that Glidewell also uses BruxZir as a trademark for milling blanks and
26 certain other products, and that the respective dental lab used a mark confusingly
27 similar to Glidewell's BruxZir mark. I further explained to the respective dental lab
28 the benefits of becoming an Authorized BruxZir Lab. I offered these dental labs the

1 opportunity to become an Authorized BruxZir Lab. Alternatively, if the dental lab
2 declined to become an Authorized BruxZir Lab, then I requested that such lab stop
3 using its mark that was confusingly similar to Glidewell's BruxZir mark.

4 11. There are two principal ways that a dental lab can become an
5 Authorized BruxZir Lab: (i) purchase from Glidewell BruxZir brand milling blanks
6 and coloring kits enabling the dental lab to fabricate BruxZir brand zirconia crowns,
7 or (ii) outsource to Glidewell the fabrication of BruxZir brand zirconia crowns (i.e.
8 by sending to Glidewell a digital or physical impression model to fabricate).

9 12. Even when such dental labs agree to become an Authorized BruxZir
10 Lab, such labs are not allowed use a mark that is confusingly similar to Glidewell's
11 BruxZir mark.

12 13. In particular, R-dent Dental Laboratory, Inc., Authentic Dental Lab,
13 Pittman Dental Laboratory, and Assured Dental Lab are examples of dental labs I,
14 along with Glidewell's in-house counsel, Mr. Keith Allred, communicated with
15 regarding their infringement of Glidewell's BruxZir mark.

16 14. REDACTED

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25 15. REDACTED
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REDACTED

16. A true and correct copy of an e-mail chain, dated between February 9, 2011 and February 14, 2011, between Pittman Dental Laboratory and Mr. Allred regarding our notice of infringement of Glidewell's BruxZir mark is attached as Exhibit 50 to the concurrently filed Appendix of Evidence. I am CC-ed on this email chain. This e-mail chain also includes a formal letter sent from Mr. Allred to Pittman Dental Laboratory on February 9, 2011 regarding same.

17. A true and correct copy of an e-mail chain, dated April 18, 2011, between Assured Dental Lab and Mr. Allred regarding our notice of infringement of Glidewell's BruxZir mark is attached as Exhibit 51 to the concurrently filed Appendix of Evidence. I am CC-ed on this email chain. This e-mail chain also includes a formal letter sent from Mr. Allred to Pittman Dental Laboratory on April 18, 2011 regarding same.

REDACTED

18.

REDACTED

19.

REDACTED

20. I followed-up my August 9, 2011 letter with an e-mail to Mr. Keating on August 16, 2011 regarding whether Keating would like to become an Authorized BruxZir Lab. Attached as Exhibit 58 to the concurrently filed Appendix is a true and correct copy of this August 16, 2011 email from me to Mr. Keating. Mr. Keating never responded to this e-mail.

1 I declare under the penalty of perjury under the laws of the United States of
2 America that the foregoing is true and correct, and that this declaration was
3 executed on November 19, 2012, at SAN CLEMENTE California.

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5 
6 Robin Bartolo

Snell & Wilmer

LAW OFFICES
150 South Grand Avenue, Suite 2600, Two California Plaza
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EXHIBIT L

[FILED UNDER SEAL]

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7 Attorneys for Plaintiff
8 James R. Glidewell Dental Ceramics, Inc.
d/b/a Glidewell Laboratories

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11 SOUTHERN DIVISION

12 JAMES R. GLIDEWELL DENTAL
13 CERAMICS, INC.,

14 Plaintiff,

15 vs.

16 KEATING DENTAL ARTS, INC.,

17 Defendant.

Case No. SACV11-01309-DOC(ANx)

**DECLARATION OF KEITH
ALLRED IN SUPPORT OF JAMES
R. GLIDEWELL DENTAL
CERAMICS, INC.'S MOTIONS FOR
SUMMARY JUDGMENT**

Hearing

Date: December 17, 2012

Time: 8:30 a.m.

Ctrm: 9D, Hon. David O. Carter

Pre-Trial Conf.: January 28, 2013

Jury Trial: February 26, 2013

18
19 AND RELATED
20 COUNTERCLAIMS.

1 I, Keith Allred, declare as follows:

2 1. I am General Counsel of plaintiff James R. Glidewell Dental
3 Ceramics, Inc. d/b/a Glidewell Laboratories (“Glidewell”) and have held this
4 position at all times relevant to this lawsuit. Except where noted to be otherwise, I
5 state the following of my own knowledge and, if called upon to do so, could and
6 would testify competently to the following.

7 2. In the course of my duties as General Counsel I have become familiar
8 with the filing system in place at Glidewell. I, as well as other Glidewell
9 employees, rely on Glidewell’s filing system to contain accurate copies of business
10 records, which records accurately report events pertaining to Glidewell’s business
11 at or near the time of the events recorded.

12 3. One of my duties as General Counsel at Glidewell is to file trademark
13 applications. In June of 2009, I personally filed the trademark application for the
14 BruxZir mark in connection with dental restoration products, including crowns and
15 bridges, which is at issue in this case. BruxZir is registered in the United States in
16 connection with Dental Bridges; Dental Caps; Dental Crowns; Dental Inlays;
17 Dental Onlays; Dental prostheses (International Class 10). I refer to these products
18 as “dental restoration products.”

19 4. Glidewell’s application to register the BruxZir mark was granted in
20 January of 2010.

21 5. Glidewell keeps copies of its trademark applications, registrations,
22 and associated file histories in its files in the ordinary course of business. Attached
23 to the concurrently filed Appendix of Exhibits (the “Appendix”) as Exhibit 59 is a
24 true and correct copy of the trademark registration for BruxZir in connection with
25 dental restoration products, Registration No. 3,739,663. Attached to the Appendix
26 as Exhibit 60 is a true and correct copy of the file history for the registration of the
27 BruxZir mark in connection with dental restoration products.
28

1 6. The BruxZir mark is owned by James R. Glidewell, Dental Ceramic,
2 Inc. DBA Glidewell Laboratories.

3 7. Glidewell uses the mark in connection with other products as well, for
4 which the mark is not currently registered, including milling blanks and various
5 pieces of lab equipment used in the manufacture of dental restoration products. I
6 personally filed an application for registration in the United States for use of the
7 BruxZir mark in connection with dental ceramics (International Class 005),
8 including milling blanks. Attached to the Appendix as Exhibit 61 is a true and
9 correct copy of the file history for that application.

10 8. The application for registration of BruxZir in connection with dental
11 ceramics, including milling blanks, is pending. Keating Dental Arts, Inc.
12 (“Keating”) has submitted an opposition to the registration, and the registration is
13 currently on hold pending the outcome of this lawsuit.

14 9. The BruxZir mark is additionally registered in connection with both
15 dental restoration products and milling blanks in Europe. Milling blanks are the
16 zirconia material used in the production of Glidewell’s BruxZir brand dental
17 restoration products.

18 10. One of my duties as General Counsel is to monitor for usage of
19 trademarks in the marketplace that are confusingly similar to the BruxZir mark.
20 The monitoring generally consists of both myself and others at Glidewell reviewing
21 advertisements in trade publications and evaluating reports of potential confusion
22 communicated to me by other Glidewell personnel.

23 11. When a confusingly similar mark is located, it is my duty to ensure
24 that the infringing company ceases using the infringing mark. The actions I take
25 range from correspondence with the infringing party, to cease and desist letters, to
26 instituting litigation. Of all of the trademark disputes Glidewell has had with third
27 parties concerning the BruxZir mark, the only case that went to litigation is this
28 case with Keating.

12. My enforcement efforts generally begin with a letter to the infringing party. In my initial communication I explain why we believe the infringing mark threatens a likelihood of confusion. Glidewell's policy, which is implemented by me, is to request that the infringing party change its mark to a mark that poses no threat of confusion with the BruxZir mark. As an alternative, the infringing party may choose to become an Authorized Lab and use Glidewell's BruxZir mark in connection with its products. In the event the infringing party expresses interest in becoming an Authorized Lab, I direct the infringing party to Robin Bartolo, Glidewell's Sales Manager. Either way, the infringing party will have to change its mark: either to something not confusingly similar to BruxZir, or to the actual BruxZir mark in the event the party becomes an Authorized Lab.

13. I have never told an infringing party that the *only* way to avoid a lawsuit is to become an Authorized Lab. The infringing party always has the choice to simply change its mark to something that is not confusingly similar to BruxZir.

14. Glidewell has only enforced its BruxZir mark against companies offering solid zirconia dental restoration products—i.e. direct competitors of Glidewell. The following are examples of trademarks that Glidewell deemed to be confusingly similar to the BruxZir mark. I was personally involved in all of the following examples of trademark enforcement.

15. Attached to the appendix as Exhibit 62 is a true and correct cease and desist e-mail I wrote to Sarah Wang of Advanced Dental Laboratory concerning Advanced Dental Laboratory's use of the mark "BruxZir" to advertise and promote dental restoration products.

16. Attached as Exhibit 63 is a true and correct copy of correspondence between myself and Dentopia Dental Lab, including a cease and desist e-mail that I sent, an e-mail response I received in response to the cease and desist e-mail, and a follow up e-mail from me. The correspondence concerned Dentopia Dental Lab's

1 use of the confusingly similar mark “Full Zirconia (Bruxzir)” to advertise and
2 promote dental restoration products.

3 17. Attached to the Appendix as Exhibit 64 is a true and correct copy of
4 correspondence between myself and Showcase Dental Lab, including an e-mailed
5 cease-and-desist letter from me, multiple e-mail responses I received regarding the
6 cease and desist letter, multiple e-mail responses I sent in response, and a copy of
7 Showcase Dental Lab’s website demonstrating that they changed their mark. The
8 correspondence concerned Showcase Dental Lab’s use of the confusingly similar
9 mark “Zir-Bruxer Crown” to advertise and promote zirconia crowns.

10 18. Attached to the Appendix as Exhibit 51 is a true and correct copy of a
11 cease and desist letter I sent to Assured Dental Lab. The correspondence concerns
12 Assured Dental Lab’s use of the confusingly similar mark “Z-Brux” to advertise
13 and promote zirconia crowns.

14 19. Attached to the Appendix as Exhibit 65 is a true and correct copy of a
15 cease and desist letter I sent to Barth Dental Lab. The correspondence concerns
16 Barth Dental Lab’s use of the confusingly similar marks “Z-Brux” and “Bruxzir” to
17 advertise and promote zirconia crowns.

18 20. Attached to the Appendix as Exhibit 48 is a true and correct copy of
19 correspondence between myself and R-Dent Laboratory, including a cease and
20 desist letter and multiple follow up e-mails between myself and R-Dent Laboratory.
21 The correspondence concerns R-Dent Laboratory’s use of the confusingly similar
22 mark “R-Brux” to advertise and promote zirconia dental restoration products.

23 21. Attached to the Appendix as Exhibit 66 is a true and correct copy of a
24 cease and desist letter I drafted and sent to China Dental Outsourcing, Inc.
25 concerning its use of the confusingly similar mark “Bruxer All Zirconia” to
26 advertise and promote dental restoration products.

27 22. Attached to the Appendix as Exhibit 50 is a true and correct copy of a
28 cease and desist letter and a follow up e-mail I sent to Pittman Dental Laboratory

1 concerning its use of the confusingly similar mark “BRUXER All-Zirconia Crown”
2 to advertise and promote zirconia crowns.

3 23. Attached to the Appendix as Exhibit 49 is a true and correct copy of
4 correspondence between myself and Authentic Dental Lab, including a cease and
5 desist letter and follow up e-mails between myself and Authentic Dental Lab,
6 concerning its use of the confusingly similar mark “Brux crowns” to advertise and
7 promote zirconia crowns.

8 24. Attached to the Appendix as Exhibit 68 is a true and correct copy of
9 correspondence between myself and Fusion Dental Lab Solutions, including a cease
10 and desist letter I sent and follow-up correspondence between Fusion Dental Lab
11 Solutions and myself, concerning Fusion Dental Lab Solutions’s use of the
12 confusingly similar mark “Full Solid Bruxer Zirconia” to advertise and promote
13 zirconia dental restoration products.

14 25. Attached to the Appendix as Exhibit 69 is a true and correct copy of
15 correspondence between myself and Old Dominion Milling Corp., including a
16 cease and desist letter I sent and follow-up correspondence between Old Dominion
17 Milling Corp. and myself, concerning Fusion Dental Lab Solutions’s use of the
18 confusingly similar mark “Bruxer” to advertise and promote zirconia dental
19 restoration products.

20 26. The foregoing exhibits constitute all of the cease and desist letters
21 Glidewell has sent pertaining to the BruxZir mark.

22 27. During my deposition in this case, Keating’s attorney brought to my
23 attention for the first time two instances on Glidewell’s website where the ®
24 symbol was mistakenly used in connection with BruxZir brand products that were
25 not within the scope of the goods and services identified on Registration No.
26 3,739,663. One instance involved a use on the website in connection with milling
27 blanks, and another in connection with a mill. Attached to the Appendix as Exhibit
28 70 is a true and correct copy of Exhibit 97 from my deposition, which is the

1 Glidewell webpage showing the ® symbol in connection with milling blanks.
2 Attached to the Appendix as Exhibit 71 is a true and correct copy of Exhibit 98,
3 which is the Glidewell webpage showing the ® symbol in connection with a mill.

4 28. Glidewell has also located and produced to Keating a copy of an e-
5 mail blast that was sent to Glidewell customers that used the ® symbol in
6 connection with a BruxZir brand milling system. Attached to the Appendix as
7 Exhibit 72 is a true and correct copy of that advertisement.

8 29. The usages of the ® symbol in Exhibits 70 - 72 were inadvertent, and
9 not consistent with Glidewell's policy, which is to only use the ® in connection
10 with BruxZir brand dental restoration products within the class for which the
11 BruxZir mark is registered; i.e., Dental Bridges; Dental Caps; Dental Crowns;
12 Dental Inlays; Dental Onlays; Dental prostheses (International Class 10).
13 Glidewell's policy is to use either the ™ symbol or no symbol when using the
14 BruxZir mark in connection with goods for which it is not registered. The two
15 instances identified on Glidewell's website were corrected within one day of my
16 becoming aware of them. The email blasts could not of course be recalled, but the
17 company intends to reiterate its instructions to marketing personnel regarding the
18 proper usage of the ® symbol on its marketing materials.

19 30. Glidewell has spent approximately REDACTED to advertise
20 and promote the BruxZir brand, in a wide variety of diverse channels, including
21 print media, internet-based advertising, direct mailers, and videos. Due to the sheer
22 amount and diversity of Glidewell's advertising (including for products other than
23 BruxZir brand products), I cannot personally review all of the advertising that goes
24 out to ensure legal compliance. Instead, I have personally trained various members
25 of the marketing department, including the Vice President of the marketing group,
26 Jim Shuck, on the proper usage of the ® symbol. In turn, he, or those employees
27 that work directly under him, review the advertising for the proper usage of the ®
28 symbol.

1 31. This system has proven effective in ensuring the proper usage of the ®
2 symbol at Glidewell. Its effectiveness is demonstrated by the fact that despite
3 Glidewell generating voluminous amounts of advertising each year, only a small
4 handful of improper (and inadvertent) uses of the ® symbol have been brought to
5 our attention.

6 32. Certainly I have never used the ® symbol with the intent to deceive
7 either the public or other members of Glidewell's trade. Nor has anyone at
8 Glidewell expressed or indicated to me any intent to deceive the public or other
9 members of the trade.

10 33. Part of my duties as General Counsel at Glidewell is to be aware of
11 and manage all litigation involving Glidewell. Aside from the present lawsuit, there
12 has been no litigation over the validity of the BruxZir mark, and, as a result, no
13 court has adjudicated it to be generic. Further, I do not believe the BruxZir mark is
14 generic—I believe it is a distinctive mark. Nor has anyone at Glidewell indicated to
15 me a belief that the BruxZir mark is generic.
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1 I declare under the penalty of perjury under the laws of the United States of
2 America that the foregoing is true and correct.

3 Executed on November 19, 2012, at Newport Beach, California.

4 
5 _____
6 Keith Allred

Snell & Wilmer

LLP
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350 South Grand Avenue, Suite 2600, Two California Plaza
Los Angeles, California 90071
(213) 929-2500

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EXHIBIT M

[FILED UNDER SEAL]

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7 Attorneys for Plaintiff
8 James R. Glidewell Dental Ceramics, Inc.
d/b/a Glidewell Laboratories

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11 SOUTHERN DIVISION

12 JAMES R. GLIDEWELL DENTAL
13 CERAMICS, INC.,

14 Plaintiff,

15 vs.

16 KEATING DENTAL ARTS, INC.,

17 Defendant.

Case No. SACV11-01309-DOC(ANx)

**DECLARATION OF NICOLE
FALLON IN SUPPORT OF JAMES
R. GLIDEWELL DENTAL
CERAMICS, INC.'S MOTIONS FOR
SUMMARY JUDGMENT**

Hearing

Date: December 17, 2012
Time: 8:30 a.m.
Ctrm: 9D, Hon. David O. Carter

Pre-Trial Conf.: January 28, 2013
Jury Trial: February 26, 2013

18
19 AND RELATED
20 COUNTERCLAIMS.

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23 **HIGHLY CONFIDENTIAL - FILED UNDER SEAL**
24 **(PURSUANT TO PROTECTIVE ORDER DATED JANUARY 30, 2012)**
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1 I, Nicole Fallon, declare as follows:

2 1. I am Technical Advisor in the Fixed Prosthodontics Department, of
3 plaintiff James R. Glidewell Dental Ceramics, Inc. d/b/a Glidewell Laboratories
4 ("Glidewell"). I have personal knowledge of the statements contained in this
5 declaration.

6 2. I began working for Glidewell in May 2000 as a customer service
7 specialist. In January 2001, I was promoted to Technical Advisor for Glidewell's
8 Fixed Prosthodontics Department. In or about 2002, I temporarily left Glidewell to
9 obtain further dental-related training at the Las Vegas Institute for Advanced Dental
10 Studies ("LVI Global") in Las Vegas, Nevada. After completing my studies at LVI
11 Global, I returned to Glidewell in September 2005 as Technical Advisor for
12 Glidewell's Fixed Prosthodontics Department and have held this position since.

13 3. As Technical Advisor for Glidewell's Fixed Prosthodontics
14 Department, in my normal course of business, my primary duties include (i)
15 communicating with dentists and dental offices regarding Glidewell products that
16 may be helpful to the dentists' particular treatment plans, and (ii) if there are issues
17 with Glidewell or potential Glidewell orders, I contact the dentists and dental
18 offices to follow up and resolve such issues.

19 4. On April 2, 2012, REDACTED
20
21 ,
22 called me to request a Glidewell discount because REDAC TED believed she had
23 purchased a BruxZir® zirconia crown. In response, I told REDACTED to send me a
24 copy of Glidewell's invoice showing the purchase of the BruxZir® zirconia crown.
25 Shortly after this phone conversation, REDACTED sent me a fax transmittal
26 enclosing a copy of an invoice from Defendant Keating Dental Arts, Inc. showing
27 REDACT ED purchase of a KDZ Bruxer crown ("Keating Bruxer Invoice"). A true and
28 correct copy of this April 2, 2012 fax transmittal addressed to me and sent from RED ACT

ED

DECLARATION OF NICOLE FALLON
CASE NO. SACV11-01309 DOC (ANx)

1 REDACTED enclosing a copy of an invoice from Defendant
2 Keating Dental Arts, Inc. showing REDACTED purchase of a KDZ Bruxer crown
3 ("Keating Bruxer Invoice") is attached as Exhibit 1 to the concurrently filed
4 Appendix of Evidence in Support of James R. Glidewell Dental Ceramics, Inc.'s
5 Motions for Summary Judgment (hereinafter, "Appendix of Evidence").

6 5. I was confused to see the Keating Bruxer Invoice. I therefore
7 contacted REDACTED on April 3, 2012 to resolve this issue. When I
8 called REDACTED, REDACTED answered the phone. I told REDACTED
9 that she had sent a Keating invoice and that Keating does not make BruxZir®
10 zirconia crowns. While our phone conversation was on-going, REDACTED relayed
11 this information to REDACTED REDACTED joined the phone conversation and said that she
12 thought "BruxZir" and "Bruxer," from Keating, "were the same thing." In response
13 to REDACTED confusion, I explained to REDACTED that Glidewell is the originator of the
14 BruxZir-branded crown. REDACTED then said that "that's pretty sneaky of them to
15 advertise the almost identical product, with the name just spelled slightly different,"
16 or words to that effect.

17 6. I then offered REDACTED a BruxZir® zirconia crown at no charge for
18 comparison. At this point, while the phone conversation was on-going, REDACTED went
19 to look for the patient's impression models. REDACTED returned to the phone shortly
20 thereafter and told me that she had discarded the patient's impression models, which
21 is required for Glidewell to make the BruxZir® zirconia crown. As an alternative, I
22 offered Dr. Le a BruxZir® zirconia crown at no charge when a suitable future case
23 arises. In response, REDACTED stated that she would call me when they had a case to
24 send me. At this point, our phone conversation concluded.

25 7. The statements of REDACTED above were not relayed by REDACTED ; I
26 personally heard REDACTED make these statements.

27 8. It is the regular practice of Glidewell's business to memorialize
28 communications with dentists and dental offices regarding any issues pertaining to

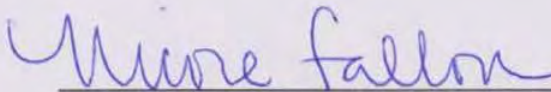
1 an account on a call note report. Thus, as part of Glidewell's regular business
2 practice, I would memorialize on a call note report information such as account
3 number, date and time of first case, case number, pan number, patient name, date
4 entered, date assigned, description of the note, call type, actual notes, status of the
5 call note report, among others.

6 9. Immediately after the conclusion of my phone conversation with RE
7 RE and REDACTED regarding REDACTED confusion between KDZ Bruxer and DA
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BruxZir®, I memorialized this phone conversation in a call note report. A true and
9 correct copy of my April 3, 2012 call note report detailing my April 3, 2012 phone
10 conversation with REDAC and REDACTED regarding REDACTED confusion between
11 KDZ Bruxer and BruxZir® ("REDACTED Call Note Report") is attached as Exhibit 2 to
12 the concurrently filed Appendix of Evidence. This Call Note Report accurately
13 reflects my April 3, 2012 phone conversation with REDAC and REDACTED
14 regarding Dr. Le's confusion between KDZ Bruxer and BruxZir®.
15

16 10. Call note reports, such as REDACTED Call Note Report, are kept in the
17 course of Glidewell's regularly conducted business activity. REDACTED Call Note
18 Report, as is the case with call reports in general, was maintained in the ordinary
19 course of Glidewell's business.
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America that the foregoing is true and correct.

Executed on November 18, 2012, at Newport Beach, California.



Nicole Fallon

Exhibit N

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7 Attorneys for Plaintiff
8 James R. Glidewell Dental Ceramics, Inc.
d/b/a Glidewell Laboratories

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11 SOUTHERN DIVISION

12 JAMES R. GLIDEWELL DENTAL
13 CERAMICS, INC.,

14 Plaintiff,

15 vs.

16 KEATING DENTAL ARTS, INC.,

17 Defendant.

Case No. SACV11-01309-DOC(ANx)

**DECLARATION OF DAVID
FRANKLYN IN SUPPORT OF
JAMES R. GLIDEWELL DENTAL
CERAMICS, INC.'S MOTIONS FOR
SUMMARY JUDGMENT**

Hearing

Date: December 17, 2012
Time: 8:30 a.m.
Ctrm: 9D, Hon. David O. Carter

Pre-Trial Conf.: January 28, 2013
Jury Trial: February 26, 2013

18
19 AND RELATED
20 COUNTERCLAIMS.
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1 I, David Franklyn, declare as follows:

2 1. I am an expert witness for plaintiff James R. Glidewell Dental
3 Ceramics, Inc. d/b/a Glidewell Laboratories (“Glidewell”). Unless otherwise
4 stated, I have personal and firsthand knowledge of the facts set forth in this
5 declaration, and I could and would testify competently to such facts if called as a
6 witness.

7 2. I am a tenured, full professor of law, specializing in intellectual
8 property and trademark law, at the University of San Francisco School of Law
9 (“USF”). I am the Executive Director of the McCarthy Institute for Intellectual
10 Property and Technology Law at USF and Director of the Center for the Empirical
11 Study of Trademark Law (CEST) in the McCarthy Institute. I am the Director of
12 the Masters of Law Program for U.S. and foreign lawyers in Intellectual Property
13 Law at USF. I teach and write primarily about trademark law. I am editor in chief
14 and co-author of McCarthy’s Desk Encyclopedia of Intellectual Property Law. I
15 have consulted and/or served as an expert witness in dozens of trademark cases. I
16 am a licensed attorney. I have written law review articles about trademark law
17 published in the Harvard Journal of Law and Technology (forthcoming), Hastings
18 Law Review, Wisconsin Law Review, Southern California Law Review and the
19 Case Western Law Review. A copy of my CV is attached as Exhibit 47 to the
20 concurrently filed Appendix of Evidence in Support of James R. Glidewell Dental
21 Ceramics, Inc.’s Motions for Summary Judgment (hereinafter, “Appendix of
22 Evidence”).

23 3. I was retained in this matter by counsel for the plaintiff, Glidewell
24 Laboratories, to render opinions as to whether (1) Plaintiff’s registered mark
25 BruxZir is predominantly seen as the generic name for the service of making solid
26 zirconia dental crowns and bridges, or for the material from which those crowns
27 and/or bridges are made, by relevant consumers in the relevant markets or
28 submarkets in the United States; (2) whether Plaintiff’s registered trademark

1 BruxZir is a strong mark in the relevant markets in which Plaintiff uses it; (3)
2 whether there is a close overlap between the markets in which Plaintiff uses its
3 BruxZir mark and the markets in which the Defendant uses its KDZ Bruxer mark;
4 (4) whether the Defendant's mark, KDZ Bruxer, is likely to cause relevant
5 consumers in the relevant markets to be confused as to its possible affiliation with
6 Plaintiff's registered mark BruxZir.

7 4. I was provided with the following documents by counsel to review in
8 order to render my opinions: Pleadings, Defendant's Motion For Summary
9 Judgment; Plaintiff's Opposition For Summary Judgment; Court's Order Denying
10 Motion For Summary Judgment; Discovery Responses of Plaintiff; Discovery
11 Responses of Defendant; Defendant's Motion For Leave to Amend; Draft of
12 Plaintiff's Opposition To Motion; documents from Keating's production showing
13 evidence of confusion, trademark search results produced by Keating for
14 "BRUXER" and "BRUXZIR," and declarations of Drs. Cohen, Bell, Doneff, Luke,
15 Michiels and Newman.

16 5. In addition to reviewing these documents, I conducted, or caused to be
17 conducted under my supervision, the following searches of the United State Patent
18 and Trademark data bases and on the internet:

- 19 • I visited and reviewed the websites of Plaintiff and Defendant on
20 several occasions between August 15, 2012 and September 15, 2012;
- 21 • I conducted internet searches for brux, bruzir, bruxism, bruxer, bruxer
22 crown, bruxing , zir, zirconia, and solid zirconia and zirconia crown
23 between August 15, 2012 and September 15, 2012.
- 24 • The following Primary United States Patent and Trademark TESS
25 (Trademark Electronic Search System) Searches were conducted
26 between August 15, 2012 and September 15, 2012. TESS searches are
27 routinely conducted to determine whether a particular mark is
28 available for registration or has already been registered by another

entity. TESS searches are also useful in determining the universe of registered marks in a particular market or submarket.

- I also conducted, or caused to be conducted, Trademark Document Retrieval (“TDR”) and/or Google searches where appropriate, in an attempt to find additional market and brand information regarding Zirconia based dental crowns, bridges and appliances. The primary searches were designed to elicit results regarding the marks at issue in this case and the constituent parts of the BruxZir mark.

6. PRIMARY TESS SEARCH 1 - “BruxZir”: The first search conducted was for the term “BruxZir” in the most broad terms TESS will allow to search for a word mark or in Boolean terms “(BruxZir)[COMB].” The only results were the pending and registered Glidewell marks.

7. PRIMARY TESS SEARCH 2 - “BRUXER”: The second search was for the term “Bruxer” in the most broad terms TESS will allow to search for a word mark, or in Boolean terms “(Bruxer)[COMB].” The only result was for Keating Dental Arts’ pending mark.

8. PRIMARY TESS SEARCH 3 - “*BRUX*”: The third search executed was the more broad search of the root “Brux” (with root expanders) , or in Boolean “(*BRUX*)[COMB].” There are 51 Pending/Registered/Dead (“PRD”) records on the USPTO’s Trademark Electronic Search System (“TESS”) that use the root *brux* within the wordmark component of their trade or service mark. Twenty (20) of these PRD records are related to the dental field. Nine (9) of the records are abandoned/dead. Only six records (6) are generally related to tooth repair/prosthesis/crowns/bridges, etc. two of the marks are owned by Plaintiff Glidewell, one is owned by Defendant Keating Dental Labs, Inc., two pending (and junior to the Glidewell and Keating marks) are owned by competitors to both Glidewell and Keating, and one (Dr. Brux) while it would appear to be a genuinely

1 competing mark is in fact presently being used for mouth guards for individuals
2 who suffer from bruxism.

3 9. PRIMARY TESS SEARCH 4 - “*ZIR”:The fourth search executed
4 was a search of the suffix “zir” (with a leading root expander) , or in Boolean
5 “(*ZIR)[COMB].” This returned 61 results, many of which are various forms of
6 “dental ceramics” and include the pending and registered BruxZir marks. Notably,
7 none of the search results are homophones/phonetically similar to “BruxZir” or
8 “Bruxer” aside from the Glidewell marks.

9 10. PRIMARY TESS SEARCH 5 - “*ZIR*”:The fifth search executed
10 was a search of the root “zir” (with a leading and trailing root expanders) , or in
11 Boolean “(*ZIR*)[COMB].” This returned 489 results, 101 of which are various
12 forms of “dental ceramics” or associated services and include the pending and
13 registered BruxZir marks. Notably, none of the search results are
14 homophones/phonetically similar to “BruxZir” or “Bruxer” aside from the
15 Glidewell marks.

16 11. The following Secondary United States Patent and Trademark TESS
17 (Trademark Electronic Search System) Searches were conducted between August
18 15, 2012 and September 15, 2012. These searches were designed to elicit results
19 within the relevant International Codes/Goods and Services descriptions based on
20 the Primary TESS Search Results for the various permutations of the root “brux,”
21 namely, bruxer, bruxzir, bruxing, and bruxism within International Classes 005,
22 010, 040, and 044. These International Classes were chosen as they encompass the
23 trademarks and service mark classes observed in the Primary Searches for Brux,
24 Zir, Bruxer and BruxZir, above.

25 12. SECONDARY TESS SEARCH 1 - “BRUXER” BASED
26 SEARCHES: The first secondary search executed was a search of the TESS
27 database for marks that use the term “bruxer” within their Goods and Services
28 Description.

13. The first sub - search in Boolean was ((IC WITH"005") SAME BRUXER) [GS]- which equates to a mark with international code "005" with the word "Bruxer" in the goods and services description. No results.

14. The second sub - search in Boolean was ((IC WITH"010") SAME BRUXER) [GS]- which equates to a mark with international code "010" with the word "Bruxer" in the goods and services description. No results.

15. The third sub - search in Boolean was ((IC WITH"040") SAME BRUXER) [GS]- which equates to a mark with international code "040" with the word "Bruxer" in the goods and services description. No results.

16. The fourth sub-search in Boolean was ((IC WITH"044") SAME BRUXER) [GS]- which equates to a mark with international code "044" with the word "Bruxer" in the goods and services description. No results.

17. SECONDARY TESS SEARCH 2 - "BRUXZIR" BASED SEARCHES: The second secondary search executed was a search of the TESS database for marks that use the term "bruxzir" within their Goods and Services Description. If the term "bruxzir" had become generic for a zirconia crown or bridge, one would expect (particularly in light of the number of "*brux*" and "*zir*" based hits for dental related goods and services) for the term to be observed within the goods and services description. It did not.

18. The first sub - search in Boolean was ((IC WITH"005") SAME BRUXZIR) [GS]- which equates to a mark with international code "005" with the word "Bruxzir" in the goods and services description. No results.

19. The second sub-search in Boolean was ((IC WITH"010") SAME BRUXZIR) [GS]- which equates to a mark with international code "010" with the word "Bruxzir" in the goods and services description. No results.

20. The third sub-search in Boolean was ((IC WITH"040") SAME BRUXZIR) [GS]- which equates to a mark with international code "040" with the word "Bruxzir" in the goods and services description. No results.

1 21. The fourth sub-search in Boolean was((IC WITH"044") SAME
2 BRUXZIR) [GS]- which equates to a mark with international code "044" with the
3 word "Bruxzir" in the goods and services description. No results.

4 22. SECONDARY TESS SEARCH 3 - "BRUXING" BASED
5 SEARCHES: The third secondary search executed was a search of the TESS
6 database for marks that use the term "bruxing" within their Goods and Services
7 Description. If the term "bruxzir" had become generic for a zirconia crown or
8 bridge, one would expect for the term "bruxing" to be observed within the goods
9 and services description for companies that make crowns and bridges in relation to
10 a zirconia crown or bridge (particularly in light of the number of "*brux*" and
11 "*zir*" based hits for dental related goods and services) and the term "bruxing" is
12 not part of any standard goods and services definition. Other than the abandoned
13 mark for "Enamelsafe" applied for by Dental Technologies, Inc., which explicitly
14 refers to "bruxing guards," it did not.

15 23. The first sub search in Boolean was ((IC WITH"005") SAME
16 BRUXING) [GS]- which equates to a mark with international code "005" with the
17 word "Bruxing" in the goods and services description. No results.

18 24. The second sub-search in Boolean was ((IC WITH"010") SAME
19 BRUXING) [GS]- which equates to a mark with international code "010" with
20 the word "Bruxing" in the goods and services description and turned up five results.
21 None of the resulting search hits were related to zirconia bridges or crowns, rather
22 they were trademarks for goods related to the treatment of the condition bruxism -
23 namely devices that measure the patient's teeth grinding, mouth guards, and
24 electronic anti-grinding devices. Additionally, none of the trademarks were even
25 remotely phonetically similar to the term "bruxzir" or "bruxer" other than
26 "Bruxometer."
27
28

1 25. The third sub-search in Boolean was (IC WITH"040") SAME
2 BRUXING) [GS]- which equates to a mark with international code "040" with the
3 word "Bruxing" in the goods and services description. No results.

4 26. The fourth sub-search in Boolean was ((IC WITH"044") SAME
5 BRUXING) [GS]- which equates to a mark with international code "044" with the
6 word "Bruxing" in the goods and services description. No results.

7 27. SECONDARY TESS SEARCH 4- "BRUXISM" BASED
8 SEARCHES: The fourth secondary search executed was a search of the TESS
9 database for marks that use the term "bruxism" within their Goods and Services
10 Description. If the term "bruxzir" had become generic for a zirconia crown or
11 bridge, one would expect for the term "bruxism" to be observed within the goods
12 and services description for companies that make crowns and bridges in relation to
13 a zirconia crown or bridge (particularly in light of the number of "**brux*" and
14 "**zir*" based hits for dental related goods and services and crowns/bridges
15 particularly) and the term "bruxing" is not part of any standard goods and services
16 definition. Again, it did not. The resulting records all dealt with the
17 treatment/prevention of bruxism as a condition via mouth guards, splints, electronic
18 devices, etc.

19 28. The first sub-search in Boolean was ((IC WITH "005") SAME
20 BRUXISM)[GS] which equates to a mark with the international code "005" with
21 the word "bruxism" in the goods and services description. I turned up one result,
22 that was abandoned, for the use of Cannabis Sativia L for the treatment of bruxism.

23 29. The second sub-search in Boolean was ((IC WITH "010") SAME
24 BRUXISM)[GS] which equates to a mark with the international code "010" with
25 the word "bruxism" in the goods and services description. I turned up one result.
26 None of the resulting search hits were related to zirconia bridges or crowns, rather
27 they were trademarks for goods related to the treatment of the condition bruxism -
28 namely devices that measure the patient's teeth grinding, mouth guards, and

1 electronic anti-grinding devices. Additionally, none of the trademarks were even
2 remotely phonetically similar to the term “bruxzir” or “bruxer” other than
3 “Therabrux,” and “Brux-Eze” - both of which were treatment devices.

4 30. The third sub-search in Boolean was ((IC WITH "040") SAME
5 BRUXISM)[GS] which equates to a mark with the international code “040” with
6 the word “bruxism” in the goods and services description. No results.

7 31. The fourth sub-search in Boolean was ((IC WITH "044") SAME
8 BRUXISM)[GS] which equates to a mark with the international code “044” with
9 the word “bruxism” in the goods and services description. I turned up 1 record,
10 “SnorePro” for “creating and fitting of apparatus for use in the prevention of . . .
11 bruxism . . .; treatment of . . . bruxism.”

12 32. I have also reviewed numerous web searches to determine whether or
13 not monolithic or solid zirconia crowns are referred to as “bruxer crowns.” The
14 first use in commerce of the BruxZir mark is claimed to be June 6, 2009, and the
15 BruxZir mark was applied to the packaging of a zirconia crown as of at least June
16 17, 2009 (per documents filed with the USPTO).

17 33. A search of online dental magazines -- i.e., Dental Economics and
18 Dentistry Today --refer to zirconia crowns as “zirconia crowns” or “all zirconia
19 crowns” as opposed to bruxor/bruxer/bruxzir crowns. Similarly the American
20 Dental Association’s website does not refer to an all zirconia crown with any form
21 of the root “brux.”

22 34. When one types the search term “bruxer crown” into Google, at least
23 as of September 15, 2012, the search engine automatically corrects the search to
24 “bruxzir crown” and all but one of the first five pages of results are clearly referring
25 to the Glidewell BruxZir product. When I forced Google to search instead for a
26 “bruxer crown,” one of the first search results that comes up is Barth Dental
27 Laboratories which offers a “Z Brux Crown” and makes reference to a March 2011
28 article in Dental Economics by Dr. Gordon Christensen which discusses (according

1 to Barth’s website) “solid zirconia bruxor crowns.” However a simple web search
2 for the article notes that Glidewell is the initiator of the solid zirconia tooth
3 restoration, the article is in fact largely about BruxZir and at no point during the
4 article is any zirconia crown or bridge referred to as a bruxer, bruxor, or is the root
5 “brux” used anywhere other than in the BruxZir product’s name. Furthermore, the
6 splash page for Barth Dental Laboratories advertises \$40 off your first “bruxzir”
7 crown – it appears that Barth is either such a new BruxZir certified lab that their
8 webpage has numerous typos on it while they come up to speed, or they are
9 attempting to capitalize on the advertising generated by the network of over 170
10 BruxZir certified labs. Additional hits are found for the York Dental Lab “Bruxer”
11 crown, which apparently is such a new product it does not appear on York’s
12 “Crown & Bridge RX” form currently available from the site.

13 35. Mascola Esthetics Dental Lab, which uses Cercon Zirconia to make
14 the “Xtreme Bruxer,” but of course, according to the internet archive the page first
15 appeared May 15, 2011. Showcase Dental Lab had a “Zir-Bruxer,” however there
16 is no evidence that the product predated the BruxZir product as a February 2, 2011
17 snapshot of their homepage shows that the site was still under construction. R-Dent
18 Dental Labs apparently made a “R-Brux” crown, though there is no residual
19 evidence of its existence other than a single mention within a YouTube video
20 entitled “How to adjust the Bruxzir Crown” dated February 18, 2011, a further
21 review of the website shows that they are in fact a licensed BruxZir lab, suggesting
22 that R-Dent was attempting to differentiate its finished product created from
23 BruxZir block from the roughly 170 other labs nation-wide that are constructing
24 bridges from the same material.

25 36. In my opinion, Plaintiff’s BruxZir mark was not the generic name ab
26 initio, and has not subsequently become the generic name, for either Plaintiff’s
27 service of making solid zirconia crowns or for Plaintiff’s provision of the material
28 out of which such crowns are made by approved labs for dentists.

1 37. A mark is categorized as “generic,” and thus not entitled to legal
2 protection, under U.S. trademark law, when it is seen by a majority of relevant
3 consumers in the relevant market(s) as the generic name for a particular service or
4 good.

5 38. Here, the relevant services are Glidewell’s service of fabricating (to
6 order for particular dentists) solid zirconia dental crowns or bridges.

7 39. Here, the relevant products are the solid zirconia crowns and bridges
8 that Glidewell fabricates for dentists.

9 40. The relevant consumers are dentists in the United States.

10 41. The relevant market is that for Glidewell’s custom-made crowns and
11 bridges.

12 42. The Plaintiff’s registered trademark “BruxZir” is, in my opinion, a
13 suggestive mark because it suggests a particular quality or characteristic of the
14 goods and services Glidewell provides. A mark is categorized as either fanciful,
15 arbitrary, suggestive, descriptive or generic. The BruxZir mark is suggestive,
16 because it suggests (but does not directly describe) a particular quality or
17 characteristic of the goods and services Glidewell provides: it suggests that crowns
18 marketed under the brand are strong because they are appropriate for patients who
19 suffer from “bruxism,” i.e., who grind their teeth, and also suggests that the crowns
20 are made from zirconia, a particularly hard material. Glidewell’s crowns are not
21 used only by people who suffer from bruxism; they are used by a variety of patients
22 who choose to have solid zirconia crowns due to tooth damage caused by a variety
23 of conditions.

24 43. A search of the internet and of the USPTO data bases reveals that the
25 generic name for solid zirconia crowns is “solid zirconia,” “full contour zirconia,”
26 “total zirconia,” or “monolithic zirconia.” See, e.g.
27 <http://www.ada.org/productguide/c/125/Crown-and-Bridge> A search of the internet
28 and of the USPTO data bases reveals that the generic name for the material out of

1 which such crowns are made is “zirconia” or “zirconia crowns.” See, e.g. Primary
2 TESS Search 3 and 4, supra; see also
3 <http://www.ada.org/productguide/c/125/Crown-and-Bridge>. Further investigation
4 suggests that the only individuals who are attempting to refer to an all-zirconia
5 crown or bridge are those that have either a vested interest in free riding on the
6 BruxZir name due to their position as a market leader, or are in fact selling a
7 finished product made from BruxZir materials.

8 44. In my searches detailed above, I found no use of the words “BruxZir”
9 or “bruxer” as the generic name of either custom-made solid zirconia crowns or as
10 the generic name of the material that is used to make such crowns. (See Primary
11 TESS Searches 1 and 2; Secondary TESS Searches 1 and 2, supra.) Indeed, I found
12 no use of these terms as generic names for any type of crown or bridge or related
13 materials within the standard or custom goods and services descriptions. Instead the
14 related terms “brux,” “bruxism” and “bruxing” have been used predominantly to
15 describe the treatment/prevention of bruxism as a condition via mouth guards,
16 splints, electronic devices, etc. (See e.g., Primary TESS Search 3 and Secondary
17 TESS Searches 3 and 4, supra.)

18 45. It is further my opinion that Plaintiff’s registered mark “BruxZir” is a
19 strong mark -- both linguistically and from a market penetration perspective – for
20 the goods and services that Glidewell provides. A strong mark is entitled to greater
21 protection under U.S. trademark law.

22 46. BruxZir is strong linguistically in the relevant markets and sub-
23 markets. A search of the USPTO data bases for registered, pending, cancelled, or
24 abandoned marks indicates there are only five marks used in commerce that sound
25 anything like BruxZir for use in connection with either dental crowns or with
26 constitutive materials. The five marks are: 1) Plaintiff’s registered mark, 2)
27 Plaintiff’s pending mark, 3) Defendant’s challenged mark “KDZ Bruxer,” 4) “GPS
28 BruxArt” (a competitor’s junior pending mark), and 5) “BruxThetix” (another

1 competitor's junior pending mark). This is not a crowded field in which several
2 companies are using a mark similar to BruxZir to sell similar products or services.
3 A mark that has relatively unique linguistic recognition in a given field is a strong
4 mark.

5 47. BruxZir also is strong from a market penetration perspective. A mark
6 is strong from a market penetration perspective when it is widely recognized by
7 relevant consumers in a particular market. Google, for example, is both
8 linguistically strong and strong from a market perspective in the search engine
9 services market. Google's market recognition strength derives from the fact that it
10 enjoys over 70% of the U.S. search market. Glidewell is the dominant provider of
11 solid zirconia crowns and of the material used to make them. Glidewell's position
12 as the dominant market leader in solid zirconia crowns is directly linked to the
13 strength of its BruxZir trademark. A trademark is a symbol by which a business
14 cements the goodwill -- that is, the continued patronage -- of its customer base.
15 Dentists and dental labs know Glidewell's products through its BruxZir trademark.
16 The BruxZir trademark is thus vital to Glidewell's goodwill and continued position
17 as the market leader in these sectors. According to Jim Shuck, Glidewell's Vice
18 President of Sales and Marketing, and Glidewell's responses to discovery, since the
19 BruxZir brand's inception, Glidewell has spent about three million dollars in
20 advertising its products and services under the BruxZir mark. It has a dominant
21 market share in the relevant markets. By all indications, the BruxZir mark is
22 extremely well known by dentists in the United States. Indeed, within the dental
23 market, it would likely meet the requirements for being a nationally famous mark.
24 It is therefore my opinion that BruxZir is a strong trademark, both linguistically and
25 from a market penetration perspective.

26 48. It is further my opinion that Plaintiff Glidewell and Defendant Keating
27 are both selling goods and services in the same or highly overlapping markets. As
28 stated above, Glidewell is the market leader in provision of custom-made solid

1 zirconia crowns. A review of Keating's website reveals that it is in the same
2 market.

3 49. Finally, it is my opinion that dentists looking for makers of solid
4 zirconia crowns are likely to be confused as to the possible affiliation between
5 BruxZir and KDZ Bruxer. Although dentists are presumably sophisticated
6 consumers, the marks at issue here are highly similar and the services are very close
7 if not identical. The addition of the separate term KDZ by Keating is not, in my
8 view, sufficient to foreclose the risk of significant confusion as to an affiliation
9 between these two competitors. This is so because of the similarity of the dominant
10 aspects of the two marks – BruxZir and Bruxer. The Bruxer component of
11 Keating's competing mark is dominant. Imagine, for example, that Keating called
12 its full zirconia crown merely KDZ. It would not be as strong a source identifier as
13 "KDZ Bruxer." This is so in part because the relevant consuming public -- that is,
14 dentists who order solid zirconia crowns from either Glidewell or Keating -- know
15 this product as a BruxZir brand crown. By making the mark BruxZir famous for
16 this type of solid zirconium crown, well before Keating entered the same market,
17 Glidewell established the BruxZir name as the dominant aspect of its mark for solid
18 zirconium crowns. Keating's customers are likely to think of Glidewell's BruxZir
19 products when they see or hear "KDZ Bruxer" precisely because of the dominance
20 of the BruxZir mark in the minds of relevant consumers for this product. The KDZ
21 portion of Keating's mark is an attempt, perhaps, to differentiate Keating's Bruxer
22 from Glidewell's BruxZir, but the KDZ portion is likely to get lost in consumers
23 minds and have minor distinguishing importance, given the fame of the BruxZir
24 mark. Moreover, Keating's use of the "Z" in its KDZ Bruxer mark reinforces the
25 potential erroneous affiliation with the BruxZir mark. One would have thought
26 Keating Dental Arts would call their zirconia crowns "KDA Bruxer" at best, so as
27 to show that they come from Keating Dental Arts. By adding a Z, the Keating mark
28 causes a mental association with the Z in Glidewell's BruxZir mark. As it stands,

1 there is a significant risk that Keating will be able to trade on the good will and
2 fame of Glidewell. This conclusion is supported by my discussions with dentists,
3 see paragraphs 55-61 below, and by reviewing dentist declarations submitted in
4 support of Glidewell's motions for summary judgment, see paragraph 71. This
5 conclusion is further supported by the numerous Keating prescription forms and lab
6 notes it produced from dentists and between Keating employees and those dentists
7 reflecting actual confusion by dentists resulting from Keating's use of the KDZ
8 Bruxer mark. This shows that confusion is not only possible, but is actually
9 occurring. It is not, as Keating suggests, evidence that BruxZir is predominantly
10 seen as the generic name for solid zirconia crowns in the relevant marketplace.

11 50. Keating has several other marks it could use to name its goods and
12 services without choosing to use the name Bruxer for solid zirconia crowns.
13 Indeed, the other major competitors in this field do not use bruxer or any variation
14 of the word "brux" as part of their marks for solid zirconia crowns or for the
15 material used to make such crowns. There is therefore no need in the relevant
16 market to copy or imitate the mark BruxZir linguistically to compete.

17 51. In this case, to prevail on its genericness counterclaim, the defendant
18 Keating must prove that BruxZir was the generic name for full zirconia dental
19 crowns by September, 2010 or May, 2011 at the latest— the dates that Keating
20 entered the market in competition with Glidewell. It is well established in the
21 Ninth Circuit that the date for determining genericness in an infringement action is
22 the date when the alleged infringer entered the relevant market.

23 52. Here, it is my understanding that Keating entered the dental crown
24 market – using the KDZ Bruxer mark – in either September 2010 when it began
25 selling zirconia crowns under the KDZ Bruxer name to existing customers, but no
26 later than May, 2011 when it publicly advertised zirconia crowns under that name.
27
28

1 53. To the extent that Keating relies on evidence before Keating entered
2 the market, it is not evidence of generic use of the term “bruxer” as a type of
3 zirconia crown. Incidental generic uses do not render a mark generic.

4 54. Trademark law makes clear that a finding of genericide is an extreme
5 ruling that can deprive a trademark owner of significant and valuable rights and
6 should not be lightly entered merely because there have been some generic uses of
7 a brand name.

8 55. My interviews with dentists corroborate my opinions about the
9 strength of the BruxZir mark and the risk of consumer confusion in this case. I
10 have spoken with several dentists about dentists’ perceptions and use of the words
11 “bruxer, bruxism, bruxer crown and BruxZir crown.” One such dentist is Dr. David
12 DiTolla – the Director of Clinical Education and Research at Glidewell. He gives
13 roughly 30-35 lectures per year to large groups of dentists about various types of
14 dental restoration materials and products. Dr. DiTolla states that “bruxer” is not a
15 term widely used in the dental industry for solid zirconium crowns.

16 56. I also spoke with Dr. Gordon Christianson – a prominent research
17 dentist in Provo Utah who is widely known by dentists in the United States. Dr.
18 Christianson has been a dentist since 1960; started two dental schools; was Dean of
19 the Scottsdale School of Dentistry; and runs the largest dental research project in
20 the United States. More information on his research can be found at
21 cliniciansreport.org and pccdental.com.

22 57. Dr. Christianson said unequivocally that: BruxZir is a well-known and
23 widely recognized brand name for full zirconia crowns by dentists and dental labs
24 in the United States – like “Coca-Cola to dentists;” BruxZir is not a generic name
25 or seen as such by dentists or dental labs; the generic names for Glidewell’s
26 zirconia crowns would be “full zirconium crowns;” before Glidewell entered the
27 market dentists and dental labs would have called this type of product a “zirconia
28 based restoration” or a “full zirconia crown” when speaking of it generally; full

1 zirconium crowns; BruxZir zirconium crowns are used for many things other than
2 to treat patients with the “pathological condition of bruxism” and indeed are used
3 for “everything” now given their high quality, strength and aesthetic appearance.

4 58. Dr. Christianson further stated that Keating’s mark is “an invasion” of
5 Glidewell’s mark; dentists and dental labs are “absolutely likely to be confused by
6 Keating’s KDZ Bruxer mark for the same product;” other companies that wish to
7 compete with Glidewell do not feel the need to do this; and that there is a real risk
8 of counterfeit products entering the market through China in this area and a need to
9 protect the BruxZir brand name. In Dr. Christianson’s view, Glidewell initiated
10 this project of wide use of full zirconia crowns and is well known for this product
11 throughout the country under its trade name BruxZir.

12 59. I also spoke with and reviewed the expert report of Dr. Ronald
13 Goldstein from Atlanta, Georgia. Dr. Goldstein is a prominent dentist and author of
14 ten dentistry text books and numerous articles on dentistry. Dr. Goldstein stated
15 that Glidewell’s BruxZir solid zirconium crown products are used extensively for
16 patients who are not bruxers. He stated that it is now the most popular general
17 crown for all types of restoration in the United States because of its strength and
18 appearance.

19 60. He stated that BruxZir is widely recognized as a brand name for
20 Glidewell’s full zirconia crown by practicing dentists throughout the United States.

21 61. He stated that he had never seen or heard of the word “bruxer,”
22 “bruxer crown” or “BruxZir” being used as the generic name for a type of crown,
23 i.e., as the generic name of a solid zirconia crown. He stated unequivocally that in
24 the text books, in the scientific literature and in common practice, the generic
25 names for solid zirconia crowns is either monolithic zirconium crown, or full
26 zirconium crown or solid zirconium crown or zirconium crown.

27 62. He stated that given his 55 years as a practicing dentist, his current
28 research, academic and professional activities, he certainly would have heard the

1 term “bruxer” used as the name for a type of crown if, indeed, that were occurring.
2 Dr. Goldstein stated emphatically that there was no such generic term as “BruxZir
3 crown” or “bruxer crown.”

4 63. Additionally, I spoke with the following dentists about the uses of the
5 terms BruxZir and bruxer in the dental industry:

- 6 • Michael J. Fanning DDS, 10271 Beach Dr.
7 Calabash, NC;
- 8 • Vincent S. Cianciulli D.M.D., 815 Hartford Tpke, Waterford, CT,
9 06385-4201;
- 10 • Dr. Terence J. Michaels, DDS, 225 Waukegan Rd, Lake Bluff, IL
11 60044; Ilya Benjamin DMD,
12 55 S Valle Verde Dr., Ste 250, Henderson, NV 89012; Dean Saiki
13 DDS, 3231 Waring Court
14 Oceanside, CA 92056; Thomas E. Bell DDS, 126 Biggs Lane, South
15 Shore, KY 41175;
16 Robert McNicholas DDS, 10342 S. Kedzie Ave., Chicago, IL 60655-
17 2016

18 64. With the exception of Dr. McNicholas¹, these dentists all disagree with
19 Dr. Eggleston that *even today* dentists use “bruxer crown” as the generic name for
20 full zirconia crowns. Rather, they corroborated my understanding that the generic
21 names for a full zirconia crown would be either “zirconia crown,” “full zirconia
22 crown” “monolithic zirconia crown” “solid zirconia crown” or the like. According
23

24 ¹ Dr. McNicholas indicated that he has on occasion used the term Bruxer to refer to
25 the type of crown, i.e., a full zirconium crown. However, he did not state that
26 dentists generally refer to this type of product in this manner when they are
27 speaking of full zirconium crowns made by entities other than Glidewell. He stated
28 that he recognized BruxZir as the brand name of Glidewell’s product. He further
stated that on one occasion he ordered a full zirconium crown from Keating and
listed on the order form “BruxZir” because at that point in time he assumed that all
solid zirconium crowns were made from materials supplied by Glidewell. He stated
that a representative from Keating called him and instructed him not to use the term
BruxZir when ordering from Keating in the future.

1 to these dentists, the word “bruxer” is understood to refer to a person who grinds
2 his or her teeth. The term “BruxZir crown” is generally used to refer to Glidewell’s
3 product. It may occasionally be misspelled. They further stated that in May 2011,
4 when Keating entered the full contour zirconia crown market, dentists and dental
5 labs did not use either Bruxer or BruxZir as the generic name for a full zirconium
6 dental crown.

7 65. These dentist all stated that they use BruxZir brand crowns (indeed, all
8 solid zirconium crowns) more in patients without bruxism than in patients who
9 suffer from that pathological disorder. The dentists with whom I spoke agreed with
10 Dr. Christianson’s statement that BruxZir full zirconium crowns today are used “for
11 everything” and that correcting the effects of bruxism is but one application. The
12 reason given is that BruxZir brand crowns are stronger, made from more durable
13 materials and better looking than most other alternatives on the market. They are,
14 therefore, attractive on a general level, for tooth restoration. Some dentists stated
15 that they always use BruxZir full zirconium crowns when restoring teeth in the rear
16 of the mouth because of their superior strength.

17 66. Finally, these dentists generally stated that if they were to encounter
18 another company using the name “bruxer” as a trademark for full zirconium
19 crowns, they may mistakenly think it was affiliated with or sponsored by Glidewell.

20 67. The USPTO searches I performed corroborate support the statements
21 of these dentists that “BruxZir” and “Bruxer” and “bruxer” have not become widely
22 used as the generic name for a type of dental crown.

23 68. Even if today’s date were the appropriate date for determining
24 genericness, it would continue to be my opinion that neither “BruxZir” nor “bruxer”
25 is predominantly seen as the generic name for a type of dental crown within the
26 relevant markets.

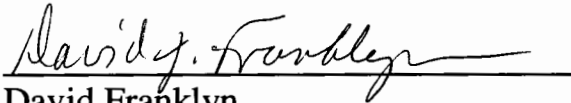
27 69. Keating is clearly using “Bruxer” as part of its brand name. It
28 capitalizes it; it includes it as a component of its mark; it uses it as a mark on its

1 website and in its other marketing materials. It therefore is not exempt from
2 liability under the descriptive fair use doctrine. If Keating wants to take advantage
3 of the descriptive fair use doctrine it should limit its use of the word “bruxer” to
4 truly descriptive uses – i.e., to uses which refer to people who brux – and not as the
5 trademark of its competing zirconia crown products.

6 70. I did not review Keating’s document production that contained
7 trademark research reports on “BRUXZIR” and “BRUXER” prior to my deposition
8 in this case. See Appendix of Evidence Exhibits 79, 80. These reports were run on
9 October 11, 2012 and my deposition was taken on October 12, 2012. I have now
10 reviewed both reports and they support my opinion that the BruxZir federally
11 registered trademark is not generic but rather is distinctive and that this is not a
12 trademark existing in a field of crowded marks.

13 71. Since writing my expert reports in this case, I have reviewed the
14 declarations of dentists – Drs. Cohen, Bell, Doneff, Luke, Michiels and Newman –
15 offer as evidence in support of Glidewell’s motions for summary judgment. These
16 dentists’ statements reinforce my opinion that there is no such thing as a generic
17 term “BruxZir crown” or “bruxer crown” recognized by dentists in the United
18 States. These declarations also reinforce my opinion that Glidewell’s BruxZir mark
19 is not generic but rather is a suggestive mark, and that, in any event, the BruxZir
20 trademark has strong brand recognition amongst United States dentists as a unique
21 source identifier for full contour zirconia dental crowns made by Glidewell and for
22 the Glidewell material out of which such crowns are made. Moreover, their
23 testimony supports my opinion that BruxZir was a strong mark for Glidewell’s full
24 zirconia crowns – and for Glidewell’s crown-making zirconia materials – well
25 before Defendant Keating dental lab entered the dental crown market in
26 competition with Glidewell using the KDZ Bruxer trademark.

1
2 I declare under the penalty of perjury under the laws of the United States of
3 America that the foregoing is true and correct, and that this declaration was
4 executed on November 19, 2012, at Hillsborough, California.

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7 David Franklyn
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EXHIBIT O

[FILED UNDER SEAL]

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7 Attorneys for Plaintiff
8 James R. Glidewell Dental Ceramics, Inc.
d/b/a Glidewell Laboratories

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11 SOUTHERN DIVISION

12 JAMES R. GLIDEWELL DENTAL
13 CERAMICS, INC.,

14 Plaintiff,

15 vs.

16 KEATING DENTAL ARTS, INC.,

17 Defendant.

18
19 AND RELATED
20 COUNTERCLAIMS.

Case No. SACV11-01309-DOC(ANx)

**DECLARATION OF DR. RONALD
GOLDSTEIN IN SUPPORT OF
JAMES R. GLIDEWELL DENTAL
CERAMICS, INC.'S MOTIONS FOR
SUMMARY JUDGMENT**

Hearing

Date: December 17, 2012
Time: 8:30 a.m.
Ctrm: 9D, Hon. David O. Carter

Pre-Trial Conf.: January 28, 2013
Jury Trial: February 26, 2013

1 I, Dr. Ronald Goldstein, declare as follows:

2 1. I am a practicing dentist in Atlanta, Georgia for almost 55 years,
3 having received my DDS from the Emory University School of Dentistry in 1957.
4 I have been retained as an expert witness on behalf of plaintiff James R. Glidewell
5 Dental Ceramics, Inc. d/b/a Glidewell Laboratories ("Glidewell") in the above
6 captioned case. Unless otherwise stated, I have personal knowledge of the
7 statements contained in this declaration. If called as a witness, I could and would
8 competently testify as to the matters stated herein.

9 2. I am Clinical Professor of Oral Rehabilitation at the Georgia Health
10 Sciences University School of Dentistry, Augusta, Georgia, Adjunct Clinical
11 Professor of Prosthodontics at Boston University Henry M. Goldman School of
12 Dental Medicine, Adjunct Professor of Restorative Dentistry at The University of
13 Texas Health Science Center at San Antonio, Texas and formerly a Special Lecturer
14 in Esthetic Dentistry at Emory University School of Dentistry, Atlanta, Georgia, as
15 well as former Visiting Professor of Oral and Maxillofacial Imaging and
16 Continuing Education at the University of Southern California School of Dentistry,
17 Los Angeles, California.

18 3. I wrote the first comprehensive textbook on esthetic and cosmetic
19 dentistry in 1976, *Esthetics in Dentistry*, and am widely considered the architect of
20 modern cosmetic dentistry.

21 4. I am a Fellow of the American College of Dentists, The International
22 College of Dentists, an Honorable Fellow of the Georgia Dental Association, and
23 an Honorary Member of O.K.U. Scholastic Fraternity. I am also a member of the
24 American Association for Dental Research and The International Association for
25 Dental Research. In 1986, I was elected to the National Academies of Practice as a
26 Distinguished Practitioner. In 1992 the American Academy of Esthetic Dentistry
27 awarded me the first Charles L. Pincus Award for his contributions to Esthetic
28 Dentistry. The same year, I was awarded the Outstanding Contribution to Cosmetic

1 Dentistry Award from the American Academy of Cosmetic Dentistry. In 1997, I
2 was also bestowed the Alpha Omega International Dental Fraternity's most
3 prestigious award for "meritorious contributions to dentistry and its allied
4 sciences," joining past recipients Albert Einstein and Jonas Salk.

5 5. The statements I make in this declaration are made on my own behalf
6 as an expert in the field of dentistry, cosmetic dentistry, and dental crowns. A true
7 and correct copy of my complete curriculum vitae is attached as Exhibit 77 to the
8 concurrently filed Appendix of Evidence in Support of James R. Glidewell Dental
9 Ceramics, Inc.'s Motions for Summary Judgment (hereinafter, "Appendix of
10 Evidence").

11 6. I was asked by counsel for Glidewell to form an opinion in the above-
12 captioned matter as to four questions:

13 a. Whether Glidewell's registered trademark BruxZir is
14 predominantly seen as the generic name for solid zirconia dental crowns, or for the
15 material from which those crowns are made, by relevant consumers in the relevant
16 markets or submarkets in the United States;

17 b. Whether Glidewell's registered trademark BruxZir is a strong
18 mark in the relevant markets in which Glidewell uses it;

19 c. Whether there is a close overlap between the markets in which
20 Glidewell uses its BruxZir mark and the markets in which the Defendant Keating
21 Dental Arts, Inc. ("Keating") uses its KDZ Bruxer mark; and

22 d. Whether there is a likelihood of confusion caused in the relevant
23 markets among relevant consumers between the Glidewell BruxZir mark and
24 Keating's KDZ Bruxer mark of solid zirconia dental crowns.

25 7. My answers to each question are in the negative. The reasons for my
26 opinions are set forth below.

27 8. In arriving at these opinions, I reviewed the Expert Report of Dr.
28 David W. Eggleston, the Expert Report of David J. Franklyn, the Rebuttal Report

1 of Dr. David Eggleston, the Rebuttal Report of David Franklyn in Response to
2 Defendant's Expert, Lori Boatright, the Rebuttal Report of David Franklyn in
3 Response to Defendant's Expert Dr. David Eggleston, the Declaration of Nicole
4 Fallon in support of Glidewell's Motions for Summary Judgment, and the
5 Declaration of Jim Shuck in support of Glidewell's Motions for Summary
6 Judgment. I have reviewed Glidewell's Complaint and Keating's motion for leave
7 to file second amended answer and supplemental materials. I have also reviewed
8 various materials cited below.

9 **A. Whether "Bruxer," "Bruxer Crown" or BruxZir are Generic Terms for**
10 **Solid Zirconia Crowns**

11 9. It is my opinion that dentists do not refer to solid zirconia crowns as
12 "bruxers" or "bruxer crowns." It is also my opinion that dentists do not understand
13 the mark BruxZir to refer to solid zirconia crowns from any source, but rather that
14 dentists understand the mark BruxZir to identify the source of solid zirconia crowns
15 and material to make solid zirconia crowns – the solid zirconia crowns supplied by
16 Glidewell.

17 10. I have never heard any dentist, or anyone else in the dental
18 community, use the terms "bruxer", "bruxer crown" or BruxZir to refer generically
19 to a solid zirconia crown or the material used to make a solid zirconia crown. Until
20 I read the expert report of Defendant's Expert, Dr. David Eggleston, I was unaware
21 of anyone in the dental community suggesting that such usage had occurred. In
22 short, I disagree with Dr. Eggleston's suggestion that the terms "bruxer", "bruxer
23 crown" or BruxZir are used by any appreciable number or proportion of dentists or
24 other members of the dental community to refer generically to a solid zirconia
25 crown or the material used to make a solid zirconia crown.

26 11. Prior to Glidewell entering the market, dentists and dental labs would
27 have called a solid zirconia crown a "zirconia-based restoration" or a "full zirconia
28 crown" when speaking of it generally. Furthermore, BruxZir solid zirconia crowns

1 have many applications other than to treat patients with the pathological condition
2 of bruxism, and indeed, are currently used for a wide variety of situations given
3 their high quality, strength, and aesthetic appearance.

4 12. My opinions are supported by my 55 years of experience in dental
5 practice, research, research reports, scientific articles, chapters in textbooks, and
6 numerous conferences that I have attended and at which I have lectured as speaker
7 or keynote speaker, and discussions with other dentists. Through this experience, I
8 interact with approximately one to two thousand dentists across the United States
9 and the world a year by phone, e-mail, on various websites, or face-to-face at
10 conferences, the dental practice lecture circuit, or elsewhere. Moreover, the
11 conferences at which I lecture and which expose me to the greatest number of
12 dentists, are academic and evidence-based in nature. As a result, the conference
13 agendas usually refer to dental applications and tools, such as solid zirconia crowns,
14 by their generic names. The vast majority of the one to two thousand dentists with
15 whom I interact through my practice and at these conferences understands that
16 BruxZir identifies Glidewell as a source of the solid zirconia crown products. In
17 addition, the vast majority of these same dentists do not use the term BruxZir or
18 “bruxer” to refer generally to a solid zirconia crown. For example, at the
19 International Federation of Esthetic Dentistry Conference in Rio de Janeiro, Brazil
20 on November 2, 2011, which was attended by over 1,300 dentists from around the
21 world including the United States, and at which I gave the keynote speech entitled
22 “The Changing Face of Esthetic Dentistry,” there were other speakers who
23 discussed crowns, but I never heard the term BruxZir or “bruxer” used by anyone to
24 refer generally to a solid zirconia crown.

25 13. I have had the same experience at the three-day Hinman Dental
26 Society Conference in Atlanta, Georgia in March 2011, where I remained in the
27 audience of over 200 dentists after my own lecture entitled “Predictable Success
28 Using the All-Ceramic Crown” to answer questions and to speak with dentists. In

1 this evidence-based lecture, similar to others from 2009 to the present in Houston,
2 Texas, Newport Beach, California, and other cities by leading dental clinicians on
3 the subject of crowns, who feature prominently on the lecture circuit with me, I
4 never heard either the speaker or dentists in the audience with whom I spoke one-
5 on-one after the lecture use the terms BruxZir or “bruxer” crown in a generic sense
6 to refer to solid zirconia crowns.

7 14. Based on my 55 years of experience as a dentist and interactions with
8 thousands of dentists each year at evidence-based lectures and conferences, it is my
9 opinion that BruxZir or “bruxer” is not commonly used as the generic term in the
10 dental field for crowns. Indeed, I have not encountered use of these terms as
11 generic names for any type of crown or related materials within the dental industry.
12 Rather, when referring generally to a solid zirconia-based crown, dentists refer to
13 the crown as a zirconia crown. In addition, it is my opinion that “bruxer” is
14 routinely used by dentists and others in the dental industry to describe a person
15 suffering from bruxism, which is the condition in which a person grinds, or bruxes,
16 his or her teeth.

17 **B. Strength of Glidewell’s BruxZir Mark**

18 15. It is my opinion that BruxZir strongly identifies a particular source of
19 solid zirconia crowns and material used to make solid zirconia crowns to dentists
20 and others in the dental community, that source being Glidewell. In my numerous
21 discussions and interactions with four prosthodontists in my dental practice, they
22 have all expressed to me an understanding or acknowledgement that the BruxZir
23 mark identifies the source of a solid zirconia crown or material used to make solid
24 zirconia crowns as sourced from Glidewell.

25 16. BruxZir is a well-known and widely recognized brand name for solid
26 zirconia crowns among dentists, dental labs, and others in the dental industry, and
27 in my 55 years of experience in dental practice, in which I have encountered
28 hundreds, if not thousands, of dental products and applications, Glidewell’s brand

1 recognition for its BruxZir solid zirconia crowns is as strong as any other dental
2 product I have seen. Indeed, BruxZir is like Coca-Cola to dentists as it is a source
3 identifier for products offered by the predominant supplier of solid zirconia crowns
4 and material used to make solid zirconia crowns, and product branded under the
5 BruxZir mark has a large market share in the dental industry. As referenced in the
6 Declaration of Jim Shuck, Vice President of Sales and Marketing at Glidewell, the
7 BruxZir.com website received REDACTED unique page views between October 2009
8 and November 2012, REDACTED of which originated in the U.S., in a U.S. market of
9 REDACTED dentists. Further, Glidewell has spent over REDACTED to date, an amount
10 with no comparison to my knowledge in the dental market, on marketing as
11 referenced in the Expert Report of David J. Franklyn, Professor at University of San
12 Francisco Law School. These statistics support my own observations in my dental
13 practice, general impressions in discussions with other dentists, and perceptions
14 reading dental trade publications that the BruxZir mark is extremely well-known in
15 and has deeply penetrated the dental market.

16 17. BruxZir is a clever and memorable portmanteau because dentists
17 would be able to identify the material in the product—zirconia—through the use of
18 “Zir” as the second half of the brand name BruxZir. This would allow dentists to
19 compare the product to other types of crowns, such as cast gold crowns and
20 porcelain fused to metal crowns (“PFMs”), and know the difference between the
21 crowns. In addition, the use of “Brux” as the first half of the brand name BruxZir
22 suggests to dentists that the product is strong and durable, and can be used in
23 applications where a strong and durable crown is desirable, such as to treat bruxism.

24 18. I know from my frequent discussions with dentists, including many I
25 surmise may well be Glidewell customers, that the vast majority of dentists do not
26 limit their use of BruxZir solid zirconia crowns to treating bruxism, but instead, use
27 them in a variety of situations when hard and durable crowns are needed. In fact,
28 through my dental practice, and speaking engagements and research publications on

1 the topic of crowns, I know that BruxZir solid zirconia crowns are often one of the
2 last resorts for dentists, who opt for appliances such as night and day guards and
3 habit-breaking exercises as first-line solutions for those suffering from bruxism.
4 The BruxZir solid zirconia crown is most frequently used only for the worst cases
5 of bruxism in which the tooth has suffered significant damage, but even in those
6 circumstances, I have not heard the term “bruxer” or BruxZir crown being used, but
7 rather a solid zirconia crown as the solution.

8 19. I am personally aware, as a dentist, of the strong and sustained
9 advertising and promotional campaign that Glidewell has run to market its solid
10 zirconia crowns and material used to make solid zirconia crowns under the BruxZir
11 mark. I specifically recall seeing, at least on a monthly basis, dual page and full
12 page glossy advertisements in *ADA News*, *Dental Economics*, *Dentistry Today*,
13 *Inside Dental Technology*, and the *Journal of Dental Technology* promoting
14 Glidewell’s BruxZir branded products, and other direct mailers, press releases,
15 continuing education brochures, samples, and specialized prescription forms to the
16 same effect, as referenced in the Declaration of Jim Shuck. One such advertisement
17 lists the numerous laboratories around the country that have been authorized by
18 Glidewell to produce its BruxZir solid zirconia crowns, which also demonstrates
19 the prevalence and wide recognition of the BruxZir solid zirconia crown. These
20 Glidewell advertisements, especially the dual page ones, consistently stand out to
21 me as I sift through hundreds of pages of journal publications and trade magazines
22 a month, and have the direct effect of leading me to associate products and the
23 numerous laboratories making the solid zirconia crowns as marketed under the
24 BruxZir brand as originating from Glidewell. Moreover, although other companies
25 also advertise their solid zirconia crowns in the same print media as Glidewell, I
26 cannot remember their names or the names of their solid zirconia crowns because
27 they have not left an impression in my mind to the degree Glidewell’s ads do.
28

20. My sense for the sustained strength of Glidewell's advertising and promotional campaign of its BruxZir solid zirconia crown is also based on the recognition that Glidewell has received in the form of awards such as the 2010 Tosoh Corporation Best Product Innovation Award as referenced in the Declaration of Jim Shuck, and the advertisements that authorized laboratories of the BruxZir solid zirconia crown use to promote the product themselves. As the BruxZir presentation by Robin Carden, Senior Director of Research and Development at Glidewell, makes amply apparent, Glidewell has also made substantial contributions to the development, practical application, and esthetic advancement of solid zirconia crowns via the resources that it has invested in research and development.

21. My opinion is also based on my 55 years of experience in the dental industry, in that to me the BruxZir mark strongly identifies a solid zirconia crown or material used to make solid zirconia crowns as sourced from Glidewell.

C. Whether There is a Close Overlap in the Markets and Likelihood of Confusion between Glidewell's BruxZir Mark and Keating's KDZ Bruxer Mark

22. It is my opinion that dentists, their assistants, and front office personnel are likely to be confused by Keating's use of the mark KDZ Bruxer to brand its line of solid zirconia crowns into believing that those crowns originate with Glidewell or are endorsed, affiliated or somehow associated with Glidewell, or that Glidewell has authorized Keating to produce its BruxZir solid zirconia crown similar to other authorized laboratories.

23. This actual confusion is exemplified in communications on REDACTED
REDACTED

REDACTED

24. As set forth above, the BruxZir mark serves as a strong source identifier for Glidewell in the dental industry for solid zirconia crowns and material used to make solid zirconia crowns.

25. It is my understanding, based on my experience as a practicing dentist and active lecturer on esthetic dentistry, as well as my review of REDACTED REDACTED, that Keating's and Glidewell's goods directly compete.

26. The BruxZir and KDZ Bruxer marks are similar in appearance and sound, and KDZ Bruxer suggests a product indicated for people who suffer from bruxism ("bruxer") and that the product is made of zirconia (the "Z" in KDZ). The actual confusion caused by these similarities is sufficient to overcome the subtle differences in the two marks in the "buyer's mind" when the buyer makes the decision to purchase Keating's dental crowns under the KDZ Bruxer mark than if products marketed under the two marks were offered side by side, as is clearly evidenced in the communications between REDACTED

27. I understand that the solid zirconia crowns offered by Glidewell and by Keating are marketed and sold through similar channels.

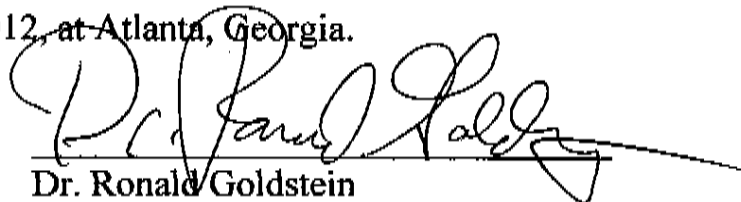
1 28. I have been informed, notably in Dr. Eggleston's report, as well as my
2 review of REDACTED

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5 Dr. Eggleston suggests that this is an indication that the
6 term BruxZir is generic. I disagree with this contention, for the reasons set forth
7 above. Dr. Eggleston's observation, REDACTED

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9 however, suggest to me that some portion or all of these
10 dentists were actually confused by Keating's use of the KDZ Bruxer mark. For
11 example, REDACTED

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19 evidence that Keating and Glidewell sell their
20 products through similar channels, that their solid zirconia crowns directly compete,
21 and that customers, including dentists and their assistants who often order for them,
22 are actually confused into thinking that the Keating KDZ Bruxer solid zirconia
23 crown originates with or is endorsed by Glidewell.

1 I declare under the penalty of perjury under the laws of the United States of
2 America that the foregoing is true and correct, and that this declaration was
3 executed on November 19, 2012, at Atlanta, Georgia.

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5 Dr. Ronald Goldstein
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7 Attorneys for Plaintiff
8 James R. Glidewell Dental Ceramics, Inc.
d/b/a Glidewell Laboratories

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11 SOUTHERN DIVISION

12 JAMES R. GLIDEWELL DENTAL
13 CERAMICS, INC.,

14 Plaintiff,

15 vs.

16 KEATING DENTAL ARTS, INC.,

17 Defendant.

Case No. SACV11-01309-DOC(ANx)

**DECLARATION OF DR. RONALD
GOLDSTEIN IN SUPPORT OF
JAMES R. GLIDEWELL DENTAL
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18
19 AND RELATED
20 COUNTERCLAIMS.
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1 I, Dr. Ronald Goldstein, declare as follows:

2 1. I am a practicing dentist in Atlanta, Georgia for almost 55 years,
3 having received my DDS from the Emory University School of Dentistry in 1957.
4 I have been retained as an expert witness on behalf of plaintiff James R. Glidewell
5 Dental Ceramics, Inc. d/b/a Glidewell Laboratories ("Glidewell") in the above
6 captioned case. Unless otherwise stated, I have personal knowledge of the
7 statements contained in this declaration. If called as a witness, I could and would
8 competently testify as to the matters stated herein.

9 2. I am Clinical Professor of Oral Rehabilitation at the Georgia Health
10 Sciences University School of Dentistry, Augusta, Georgia, Adjunct Clinical
11 Professor of Prosthodontics at Boston University Henry M. Goldman School of
12 Dental Medicine, Adjunct Professor of Restorative Dentistry at The University of
13 Texas Health Science Center at San Antonio, Texas and formerly a Special Lecturer
14 in Esthetic Dentistry at Emory University School of Dentistry, Atlanta, Georgia, as
15 well as former Visiting Professor of Oral and Maxillofacial Imaging and
16 Continuing Education at the University of Southern California School of Dentistry,
17 Los Angeles, California.

18 3. I wrote the first comprehensive textbook on esthetic and cosmetic
19 dentistry in 1976, *Esthetics in Dentistry*, and am widely considered the architect of
20 modern cosmetic dentistry.

21 4. I am a Fellow of the American College of Dentists, The International
22 College of Dentists, an Honorable Fellow of the Georgia Dental Association, and
23 an Honorary Member of O.K.U. Scholastic Fraternity. I am also a member of the
24 American Association for Dental Research and The International Association for
25 Dental Research. In 1986, I was elected to the National Academies of Practice as a
26 Distinguished Practitioner. In 1992 the American Academy of Esthetic Dentistry
27 awarded me the first Charles L. Pincus Award for his contributions to Esthetic
28 Dentistry. The same year, I was awarded the Outstanding Contribution to Cosmetic

1 Dentistry Award from the American Academy of Cosmetic Dentistry. In 1997, I
2 was also bestowed the Alpha Omega International Dental Fraternity's most
3 prestigious award for "meritorious contributions to dentistry and its allied
4 sciences," joining past recipients Albert Einstein and Jonas Salk.

5 5. The statements I make in this declaration are made on my own behalf
6 as an expert in the field of dentistry, cosmetic dentistry, and dental crowns. A true
7 and correct copy of my complete curriculum vitae is attached as Exhibit 77 to the
8 concurrently filed Appendix of Evidence in Support of James R. Glidewell Dental
9 Ceramics, Inc.'s Motions for Summary Judgment (hereinafter, "Appendix of
10 Evidence").

11 6. I was asked by counsel for Glidewell to form an opinion in the above-
12 captioned matter as to four questions:

13 a. Whether Glidewell's registered trademark BruxZir is
14 predominantly seen as the generic name for solid zirconia dental crowns, or for the
15 material from which those crowns are made, by relevant consumers in the relevant
16 markets or submarkets in the United States;

17 b. Whether Glidewell's registered trademark BruxZir is a strong
18 mark in the relevant markets in which Glidewell uses it;

19 c. Whether there is a close overlap between the markets in which
20 Glidewell uses its BruxZir mark and the markets in which the Defendant Keating
21 Dental Arts, Inc. ("Keating") uses its KDZ Bruxer mark; and

22 d. Whether there is a likelihood of confusion caused in the relevant
23 markets among relevant consumers between the Glidewell BruxZir mark and
24 Keating's KDZ Bruxer mark of solid zirconia dental crowns.

25 7. My answers to each question are in the negative. The reasons for my
26 opinions are set forth below.

27 8. In arriving at these opinions, I reviewed the Expert Report of Dr.
28 David W. Eggleston, the Expert Report of David J. Franklyn, the Rebuttal Report

1 of Dr. David Eggleston, the Rebuttal Report of David Franklyn in Response to
2 Defendant's Expert, Lori Boatright, the Rebuttal Report of David Franklyn in
3 Response to Defendant's Expert Dr. David Eggleston, the Declaration of Nicole
4 Fallon in support of Glidewell's Motions for Summary Judgment, and the
5 Declaration of Jim Shuck in support of Glidewell's Motions for Summary
6 Judgment. I have reviewed Glidewell's Complaint and Keating's motion for leave
7 to file second amended answer and supplemental materials. I have also reviewed
8 various materials cited below.

9 **A. Whether "Bruxer," "Bruxer Crown" or BruxZir are Generic Terms for**
10 **Solid Zirconia Crowns**

11 9. It is my opinion that dentists do not refer to solid zirconia crowns as
12 "bruxers" or "bruxer crowns." It is also my opinion that dentists do not understand
13 the mark BruxZir to refer to solid zirconia crowns from any source, but rather that
14 dentists understand the mark BruxZir to identify the source of solid zirconia crowns
15 and material to make solid zirconia crowns – the solid zirconia crowns supplied by
16 Glidewell.

17 10. I have never heard any dentist, or anyone else in the dental
18 community, use the terms "bruxer", "bruxer crown" or BruxZir to refer generically
19 to a solid zirconia crown or the material used to make a solid zirconia crown. Until
20 I read the expert report of Defendant's Expert, Dr. David Eggleston, I was unaware
21 of anyone in the dental community suggesting that such usage had occurred. In
22 short, I disagree with Dr. Eggleston's suggestion that the terms "bruxer", "bruxer
23 crown" or BruxZir are used by any appreciable number or proportion of dentists or
24 other members of the dental community to refer generically to a solid zirconia
25 crown or the material used to make a solid zirconia crown.

26 11. Prior to Glidewell entering the market, dentists and dental labs would
27 have called a solid zirconia crown a "zirconia-based restoration" or a "full zirconia
28 crown" when speaking of it generally. Furthermore, BruxZir solid zirconia crowns

1 have many applications other than to treat patients with the pathological condition
2 of bruxism, and indeed, are currently used for a wide variety of situations given
3 their high quality, strength, and aesthetic appearance.

4 12. My opinions are supported by my 55 years of experience in dental
5 practice, research, research reports, scientific articles, chapters in textbooks, and
6 numerous conferences that I have attended and at which I have lectured as speaker
7 or keynote speaker, and discussions with other dentists. Through this experience, I
8 interact with approximately one to two thousand dentists across the United States
9 and the world a year by phone, e-mail, on various websites, or face-to-face at
10 conferences, the dental practice lecture circuit, or elsewhere. Moreover, the
11 conferences at which I lecture and which expose me to the greatest number of
12 dentists, are academic and evidence-based in nature. As a result, the conference
13 agendas usually refer to dental applications and tools, such as solid zirconia crowns,
14 by their generic names. The vast majority of the one to two thousand dentists with
15 whom I interact through my practice and at these conferences understands that
16 BruxZir identifies Glidewell as a source of the solid zirconia crown products. In
17 addition, the vast majority of these same dentists do not use the term BruxZir or
18 “bruxer” to refer generally to a solid zirconia crown. For example, at the
19 International Federation of Esthetic Dentistry Conference in Rio de Janeiro, Brazil
20 on November 2, 2011, which was attended by over 1,300 dentists from around the
21 world including the United States, and at which I gave the keynote speech entitled
22 “The Changing Face of Esthetic Dentistry,” there were other speakers who
23 discussed crowns, but I never heard the term BruxZir or “bruxer” used by anyone to
24 refer generally to a solid zirconia crown.

25 13. I have had the same experience at the three-day Hinman Dental
26 Society Conference in Atlanta, Georgia in March 2011, where I remained in the
27 audience of over 200 dentists after my own lecture entitled “Predictable Success
28 Using the All-Ceramic Crown” to answer questions and to speak with dentists. In

1 this evidence-based lecture, similar to others from 2009 to the present in Houston,
2 Texas, Newport Beach, California, and other cities by leading dental clinicians on
3 the subject of crowns, who feature prominently on the lecture circuit with me, I
4 never heard either the speaker or dentists in the audience with whom I spoke one-
5 on-one after the lecture use the terms BruxZir or “bruxer” crown in a generic sense
6 to refer to solid zirconia crowns.

7 14. Based on my 55 years of experience as a dentist and interactions with
8 thousands of dentists each year at evidence-based lectures and conferences, it is my
9 opinion that BruxZir or “bruxer” is not commonly used as the generic term in the
10 dental field for crowns. Indeed, I have not encountered use of these terms as
11 generic names for any type of crown or related materials within the dental industry.
12 Rather, when referring generally to a solid zirconia-based crown, dentists refer to
13 the crown as a zirconia crown. In addition, it is my opinion that “bruxer” is
14 routinely used by dentists and others in the dental industry to describe a person
15 suffering from bruxism, which is the condition in which a person grinds, or bruxes,
16 his or her teeth.

17 **B. Strength of Glidewell’s BruxZir Mark**

18 15. It is my opinion that BruxZir strongly identifies a particular source of
19 solid zirconia crowns and material used to make solid zirconia crowns to dentists
20 and others in the dental community, that source being Glidewell. In my numerous
21 discussions and interactions with four prosthodontists in my dental practice, they
22 have all expressed to me an understanding or acknowledgement that the BruxZir
23 mark identifies the source of a solid zirconia crown or material used to make solid
24 zirconia crowns as sourced from Glidewell.

25 16. BruxZir is a well-known and widely recognized brand name for solid
26 zirconia crowns among dentists, dental labs, and others in the dental industry, and
27 in my 55 years of experience in dental practice, in which I have encountered
28 hundreds, if not thousands, of dental products and applications, Glidewell’s brand

1 recognition for its BruxZir solid zirconia crowns is as strong as any other dental
2 product I have seen. Indeed, BruxZir is like Coca-Cola to dentists as it is a source
3 identifier for products offered by the predominant supplier of solid zirconia crowns
4 and material used to make solid zirconia crowns, and product branded under the
5 BruxZir mark has a large market share in the dental industry. As referenced in the
6 Declaration of Jim Shuck, Vice President of Sales and Marketing at Glidewell, the
7 BruxZir.com website received 289,210 unique page views between October 2009
8 and November 2012, 78% of which originated in the U.S., in a U.S. market of
9 125,000 dentists. Further, Glidewell has spent over \$3 million to date, an amount
10 with no comparison to my knowledge in the dental market, on marketing as
11 referenced in the Expert Report of David J. Franklyn, Professor at University of San
12 Francisco Law School. These statistics support my own observations in my dental
13 practice, general impressions in discussions with other dentists, and perceptions
14 reading dental trade publications that the BruxZir mark is extremely well-known in
15 and has deeply penetrated the dental market.

16 17. BruxZir is a clever and memorable portmanteau because dentists
17 would be able to identify the material in the product—zirconia—through the use of
18 “Zir” as the second half of the brand name BruxZir. This would allow dentists to
19 compare the product to other types of crowns, such as cast gold crowns and
20 porcelain fused to metal crowns (“PFMs”), and know the difference between the
21 crowns. In addition, the use of “Brux” as the first half of the brand name BruxZir
22 suggests to dentists that the product is strong and durable, and can be used in
23 applications where a strong and durable crown is desirable, such as to treat bruxism.

24 18. I know from my frequent discussions with dentists, including many I
25 surmise may well be Glidewell customers, that the vast majority of dentists do not
26 limit their use of BruxZir solid zirconia crowns to treating bruxism, but instead, use
27 them in a variety of situations when hard and durable crowns are needed. In fact,
28 through my dental practice, and speaking engagements and research publications on

1 the topic of crowns, I know that BruxZir solid zirconia crowns are often one of the
2 last resorts for dentists, who opt for appliances such as night and day guards and
3 habit-breaking exercises as first-line solutions for those suffering from bruxism.
4 The BruxZir solid zirconia crown is most frequently used only for the worst cases
5 of bruxism in which the tooth has suffered significant damage, but even in those
6 circumstances, I have not heard the term “bruxer” or BruxZir crown being used, but
7 rather a solid zirconia crown as the solution.

8 19. I am personally aware, as a dentist, of the strong and sustained
9 advertising and promotional campaign that Glidewell has run to market its solid
10 zirconia crowns and material used to make solid zirconia crowns under the BruxZir
11 mark. I specifically recall seeing, at least on a monthly basis, dual page and full
12 page glossy advertisements in *ADA News*, *Dental Economics*, *Dentistry Today*,
13 *Inside Dental Technology*, and the *Journal of Dental Technology* promoting
14 Glidewell’s BruxZir branded products, and other direct mailers, press releases,
15 continuing education brochures, samples, and specialized prescription forms to the
16 same effect, as referenced in the Declaration of Jim Shuck. One such advertisement
17 lists the numerous laboratories around the country that have been authorized by
18 Glidewell to produce its BruxZir solid zirconia crowns, which also demonstrates
19 the prevalence and wide recognition of the BruxZir solid zirconia crown. These
20 Glidewell advertisements, especially the dual page ones, consistently stand out to
21 me as I sift through hundreds of pages of journal publications and trade magazines
22 a month, and have the direct effect of leading me to associate products and the
23 numerous laboratories making the solid zirconia crowns as marketed under the
24 BruxZir brand as originating from Glidewell. Moreover, although other companies
25 also advertise their solid zirconia crowns in the same print media as Glidewell, I
26 cannot remember their names or the names of their solid zirconia crowns because
27 they have not left an impression in my mind to the degree Glidewell’s ads do.
28

20. My sense for the sustained strength of Glidewell's advertising and promotional campaign of its BruxZir solid zirconia crown is also based on the recognition that Glidewell has received in the form of awards such as the 2010 Tosoh Corporation Best Product Innovation Award as referenced in the Declaration of Jim Shuck, and the advertisements that authorized laboratories of the BruxZir solid zirconia crown use to promote the product themselves. As the BruxZir presentation by Robin Carden, Senior Director of Research and Development at Glidewell, makes amply apparent, Glidewell has also made substantial contributions to the development, practical application, and esthetic advancement of solid zirconia crowns via the resources that it has invested in research and development.

21. My opinion is also based on my 55 years of experience in the dental industry, in that to me the BruxZir mark strongly identifies a solid zirconia crown or material used to make solid zirconia crowns as sourced from Glidewell.

C. Whether There is a Close Overlap in the Markets and Likelihood of Confusion between Glidewell's BruxZir Mark and Keating's KDZ Bruxer Mark

22. It is my opinion that dentists, their assistants, and front office personnel are likely to be confused by Keating's use of the mark KDZ Bruxer to brand its line of solid zirconia crowns into believing that those crowns originate with Glidewell or are endorsed, affiliated or somehow associated with Glidewell, or that Glidewell has authorized Keating to produce its BruxZir solid zirconia crown similar to other authorized laboratories.

23. This actual confusion is exemplified in communications on April 2, 2012 between Nicole Fallon ("Fallon"), a Glidewell Technical Advisor, and Michelle Carlisle ("Carlisle"), an office manager from the dental office of Dr. Jade Le, DMD ("Dr. Le"). Carlisle called Fallon and asked for a Glidewell discount because Dr. Le believed she had purchased a BruxZir solid zirconia crown.

1 However, when Carlisle sent Fallon a fax of the invoice, it was an invoice from
2 Keating showing Dr. Le's purchase of a KDZ Bruxer crown. Fallon then called
3 Carlisle back and told her that she had sent a Keating invoice and that Keating does
4 not make BruxZir zirconia crowns. Dr. Le then joined the conversation and said
5 that she thought "BruxZir" and "Bruxer," from Keating, "were the same thing."
6 When Fallon explained to Dr. Le that Glidewell is the originator of the BruxZir-
7 branded crown, Dr. Le said that "that's pretty sneaky of them to advertise the almost
8 identical product, with the name just spelled slightly different," or words to that
9 effect, as referenced in the Declaration of Nicole Fallon.

10 24. As set forth above, the BruxZir mark serves as a strong source
11 identifier for Glidewell in the dental industry for solid zirconia crowns and material
12 used to make solid zirconia crowns.

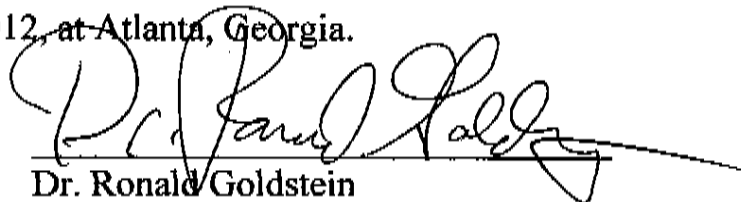
13 25. It is my understanding, based on my experience as a practicing dentist
14 and active lecturer on esthetic dentistry, as well as my review of 62 separate
15 Keating prescription and order forms and internal notes by Keating employees, that
16 Keating's and Glidewell's goods directly compete.

17 26. The BruxZir and KDZ Bruxer marks are similar in appearance and
18 sound, and KDZ Bruxer suggests a product indicated for people who suffer from
19 bruxism ("bruxer") and that the product is made of zirconia (the "Z" in KDZ). The
20 actual confusion caused by these similarities is sufficient to overcome the subtle
21 differences in the two marks in the "buyer's mind" when the buyer makes the
22 decision to purchase Keating's dental crowns under the KDZ Bruxer mark than if
23 products marketed under the two marks were offered side by side, as is clearly
24 evidenced in the communications between Fallon, Carlisle, and Dr. Le
25 aforementioned.

26 27. I understand that the solid zirconia crowns offered by Glidewell and by
27 Keating are marketed and sold through similar channels.
28

1 28. I have been informed, notably in Dr. Eggleston's report, as well as my
2 review of 62 separate Keating prescription and order forms and internal notes by
3 Keating employees, that a number of Keating customers sent order forms to
4 Keating in which they indicated that they wished to order a solid zirconia crown by
5 using the term BruxZir. Dr. Eggleston suggests that this is an indication that the
6 term BruxZir is generic. I disagree with this contention, for the reasons set forth
7 above. Dr. Eggleston's observation, Keating customers' purchase orders for
8 BruxZir solid zirconia crowns, and Keating employees' acknowledgement of their
9 customers' confusion, however, suggest to me that some portion or all of these
10 dentists were actually confused by Keating's use of the KDZ Bruxer mark. For
11 example, on October 18, 2011, Dr. Gary Tobin ("Dr. Tobin") sent Keating a
12 prescription form requesting a "#3 – Bruxzur crown." A Keating employee then
13 called Dr. Tobin and "explained that [sic] it was a preproprietary [sic] name and does
14 he want a keqting [sic] Bruxer." Thus, a Keating employee acknowledged his
15 understanding that BruxZir was a proprietary name – i.e., a source-identifying mark
16 – and requesting clarification from a prescribing dentist as to which company's
17 product he wanted to order. The Dr. Tobin communication with a Keating
18 employee, as well as several others in the prescription and purchase order forms,
19 unequivocally demonstrate to me evidence that Keating and Glidewell sell their
20 products through similar channels, that their solid zirconia crowns directly compete,
21 and that customers, including dentists and their assistants who often order for them,
22 are actually confused into thinking that the Keating KDZ Bruxer solid zirconia
23 crown originates with or is endorsed by Glidewell.

1 I declare under the penalty of perjury under the laws of the United States of
2 America that the foregoing is true and correct, and that this declaration was
3 executed on November 19, 2012, at Atlanta, Georgia.

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5 Dr. Ronald Goldstein
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Attorneys for Plaintiff
7 James R. Glidewell Dental Ceramics, Inc.
d/b/a Glidewell Laboratories
8

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11 SOUTHERN DIVISION

12 JAMES R. GLIDEWELL DENTAL
CERAMICS, INC.,

13 Plaintiff,

14 vs.

15 KEATING DENTAL ARTS, INC.,

16 Defendant.

Case No. SACV11-01309-DOC(ANx)

**DECLARATION OF WILLIAM
WONG IN SUPPORT OF JAMES R.
GLIDEWELL DENTAL CERAMICS,
INC.'S MOTIONS FOR SUMMARY
JUDGMENT**

Hearing

Date: December 17, 2012
Time: 8:30 a.m.
Ctrm: 9D, Hon. David O. Carter

Pre-Trial Conf.: January 28, 2013
Jury Trial: February 26, 2013

17 AND RELATED
18 COUNTERCLAIMS.
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DECLARATION OF W. WONG
CASE NO. SACV11-01309 DOC (ANx)

1 I, William Wong, declare as follows:

2 1. I am a member in good standing of the State Bar of California and am
3 licensed to practice before all courts in the state. I am an associate with the law
4 firm of Snell & Wilmer LLP, and am one of the attorneys responsible for
5 representing Plaintiff James R. Glidewell Dental Ceramics, Inc., d/b/a Glidewell
6 Laboratories ("Glidewell"). Unless otherwise indicated, I have personal knowledge
7 of the following facts, and if called to testify thereon, could and would do so.

8 2. On November 13, 2012, after realizing that defendant Keating Dental
9 Arts, Inc. ("Keating") had not produced a trademark search report that it had
10 commissioned in connection with its brand selection process, I sent a letter to
11 Keating's counsel, David Jankowski, requesting production of this report. While
12 this report was specifically identified by Keating's own witness in his deposition
13 (Robert Brandon) and is clearly responsive to Glidewell's document requests,
14 Keating had not produced this document. [See Exhibit 39 attached to the Appendix
15 of Evidence in Support of James R. Glidewell Dental Ceramics, Inc.'s Motions for
16 Summary Judgment ("Appendix of Evidence"); Exhibit 84 to Appendix of
17 Evidence (Brandon Depo. Testimony at 93:4-18).] In response to my letter, on
18 November 15, 2012, Mr. Jankowski informed me that Keating had searched for, but
19 could not locate, the search results referenced by Mr. Brandon during his
20 deposition.

21 3. Attached as Exhibit 5 to the Appendix of Evidence is a true and correct
22 copy of the Zir-Cast information sheet, as produced by Keating in this action, bates
23 numbered KDA-002448-002449.

24 4. Attached as Exhibit 15 to the Appendix of Evidence is a true and
25 correct copy of the Keating prescription order forms and lab notes that were
26 produced in this action by Keating (with bates number ranging from KDA-001928
27 to KDA-003502).

28

DECLARATION OF W. WONG
CASE NO. SACV11-01309 DOC (ANx)

1 5. Attached as Exhibit 39 to the Appendix of Evidence is a true and
2 correct copy of Defendant/Counterclaim Plaintiff's Response to
3 Plaintiff/Counterclaim Defendant's First Request for Production of Documents and
4 Things Nos. 1-42, as served on Glidewell's counsel by Keating's counsel on May
5 18, 2012.

6 6. Attached as Exhibit 78 to the Appendix of Evidence is a true and
7 correct copy of the Petition for Cancellation filed with the Trademark Trials and
8 Appeals Board on August 17, 2012, by Keating (as filed by Keating in this action
9 as Dkt#58-1).

10 7. Attached as Exhibit 79 to the Appendix of Evidence is a true and
11 correct copy of the Thomson Compumark Trademark Search Report (BRUXZIR)
12 that was produced in this action by Keating, and bates numbered KDA-003561-
13 871.

14 8. Attached as Exhibit 80 to the Appendix of Evidence is a true and
15 correct copy of the Thomson Compumark Trademark Search Report (BRUXER),
16 that was produced in this action by Keating, and bates numbered KDA-003871-
17 4196.

18 9. Attached as Exhibit 81 to the Appendix of Evidence is a true and
19 correct copy of Defendant/Counterclaim Plaintiff's Response to
20 Plaintiff/Counterclaim Defendant's First Set of Interrogatories Nos. 1-25, as served
21 on Glidewell's counsel by Keating's counsel on April 19, 2012.

22 10. Attached as Exhibit 82 to the Appendix of Evidence is a true and
23 correct copy of the attorneys' eyes only portions of Defendant/Counterclaim
24 Plaintiff's Response to Plaintiff/Counterclaim Defendant's First Set of
25 Interrogatories Nos. 1-25, as served on Glidewell's counsel by Keating's counsel
26 on April 19, 2012.

27
28

1 11. Attached as Exhibit 83 to the Appendix of Evidence are true and
2 correct pages and exhibits from the Deposition of James Shuck.

3 12. Attached as Exhibit 84 to the Appendix of Evidence are true and
4 correct pages and exhibits from the Deposition of Robert Dale Brandon.

5 13. Attached as Exhibit 85 to the Appendix of Evidence are true and
6 correct pages and exhibits from the Deposition of Shaun Keating.


7 14. Attached as Exhibit 86 to the Appendix of Evidence are true and
8 correct pages and exhibits from the Deposition of Diane Mallos Donich.

9 15. Attached as Exhibit 87 to the Appendix of Evidence is a true and
10 correct copy of Keating Dental Arts, Inc.'s Responses to Plaintiff's First Set of
11 Requests for Admission (Nos. 1-11), as served on Glidewell's counsel by Keating's
12 counsel on October 25, 2012.

13 16. Attached as Exhibit 88 to the Appendix of Evidence is a true and
14 correct copy of Keating Dental Arts, Inc.'s Third Amended Initial Disclosures
15 Pursuant to Federal Rule of Civil Procedure 26(a)(1), as served on Glidewell's
16 counsel by Keating's counsel on October 19, 2012.

1 I declare under the penalty of perjury under the laws of the United States of
2 America that the foregoing is true and correct.

3
4 Executed on November 19, 2012 in Los Angeles, California.

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7 William Wong

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Exhibit Q

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10 Attorneys for Plaintiff
11 James R. Glidewell Dental Ceramics, Inc.
12 d/b/a Glidewell Laboratories

13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA
15 SOUTHERN DIVISION

16 JAMES R. GLIDEWELL DENTAL
17 CERAMICS, INC.,

18 Plaintiff,

19 vs.

20 KEATING DENTAL ARTS, INC.,

21 Defendant.

22 AND RELATED
23 COUNTERCLAIMS.

Case No. SACV11-01309-DOC(ANx)

**DECLARATION OF TERENCE J.
MICHIELS, D.D.S., IN SUPPORT OF
PLAINTIFF'S MOTIONS FOR
SUMMARY JUDGMENT**

Hearing

Date: December 17, 2012

Time: 8:30 a.m.

Ctrm: 9D, Hon. David O. Carter

Pre-Trial Conf.: January 28, 2013

Jury Trial: February 26, 2013

DECLARATION OF TERENCE J. MICHIELS, D.D.S., ISO
PLAINTIFF'S MOTIONS FOR SUMMARY JUDGMENT
CASE NO. SACV11-01309-DOC(ANx)

16126501

Exhibit Q

1 I, Terence J. Michiels, D.D.S., declare as follows:

2 1. I am over the age of eighteen years old and unless otherwise indicated,
3 I state the following of my own personal knowledge and, if called upon to do so, I
4 could and would testify competently to the following.

5 2. I practice general dentistry in Lake Bluff, Illinois. I received my
6 Doctor of Dental Surgery degree from Creighton University in 1996. I have been
7 practicing general dentistry for more than sixteen years and have been restoring
8 teeth with various types of crowns and bridges for more than sixteen years.

9 3. Since prior to March 2010, I have regularly received Glidewell
10 Laboratories's ("Glidewell Labs") promotional material for Glidewell Labs's
11 BRUXZIR brand zirconia crowns and bridges. I have regularly seen Glidewell
12 Labs's BRUXZIR brand zirconia crowns and bridges advertised in the leading
13 dental magazines and I have received letters from Glidewell Labs advertising its
14 BRUXZIR brand zirconia crowns and bridges. I have been purchasing Glidewell
15 Labs's BRUXZIR brand zirconia crowns and bridges since on or about March 11,
16 2010 and continue to do so. Moreover, I attended the Chicago Dental Society
17 Midwinter Meeting in February 2010 and February 2011, where Glidewell Labs
18 prominently promoted its BRUXZIR brand zirconia crowns and bridges. At both
19 of these conventions, I spoke with other dentists about Glidewell Labs's BRUXZIR
20 brand zirconia crowns and bridges. Since learning about Glidewell Labs's
21 BRUXZIR brand zirconia crowns and bridges prior to March 2010, I have spoken
22 with other dentists, including my father, my orthodontist, and several other
23 colleagues, about the quality of Glidewell Labs's BRUXZIR brand zirconia crowns
24 and bridges.

25 4. Since learning about Glidewell Labs's BRUXZIR brand zirconia
26 crowns and bridges prior to March 2010 and through the date of this declaration, I
27 have known, and through my various communications with other dentists, I am
28 aware that other dentists have known, that the BRUXZIR mark is a brand or

1 trademark that signifies a single source of zirconia crowns and bridges and the
2 zirconia material from which those products are made. Since learning about
3 Glidewell Labs's BRUXZIR brand zirconia crowns and bridges prior to March
4 2010 and through the date of this declaration, I have known, and through my
5 various communications with other dentists, I am aware that other dentists have
6 known, that the BRUXZIR mark is a brand or trademark associated with Glidewell
7 Labs.

8 5. Since learning about Glidewell Labs's BRUXZIR brand zirconia
9 crowns and bridges prior to March 2010 and through the date of this declaration, I
10 have known, and through my various communications with other dentists, I am
11 aware that other dentists have known, that the BRUXZIR mark is a brand or
12 trademark that signifies that Glidewell Labs was the source of a zirconia crown or
13 bridge marketed under that trademark.

14 6. Since learning about Glidewell Labs's BRUXZIR brand zirconia
15 crowns and bridges prior to March 2010 and through the date of this declaration, I
16 have known, and through my various communications with other dentists, I am
17 aware that other dentists have known, that the BRUXZIR mark is a brand or
18 trademark that signifies that Glidewell Labs was the source of zirconia material
19 (from which zirconia crowns and bridges may be made) marketed under that
20 trademark.

21 7. Both before and after March 2010, I, and other dentists with whom I
22 regularly communicate, use the term "bruxer" exclusively to refer to a person who
23 suffers from bruxism; i.e., habitual and destructive grinding of the teeth and
24 clenching of the jaw.

25 8. Both before and after March 2010, the terms "bruxer," "bruxer
26 crown," "bruxzir," and "bruxzir crown" are not terms that I, nor the dentists I
27 communicate with, use to refer to zirconia crowns and bridges as a type or category
28 of product. I have never used any of these terms to refer to zirconia crowns or

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1 bridges as a type or category of product, and I have never heard any other dentist
2 use any of those terms for that purpose. Rather, both before and after March 2010,
3 when referring to zirconia crowns and bridges as a type or category of product
4 generally, I, and the dentists that I communicate with, use the terms "zirconia
5 crowns," "all zirconia crowns," "monolithic zirconia crowns," "full zirconia
6 crowns," or "solid zirconia crowns."

7 9. Since learning about Glidewell Labs's BRUXZIR brand zirconia
8 crowns and bridges prior to March 2010 and through the date of this declaration, I
9 have often used the term BRUXZIR to identify zirconia crowns and bridges
10 manufactured by Glidewell Labs, because I understand that the BRUXZIR mark is
11 a brand or trademark that signifies that Glidewell Labs was the source of a zirconia
12 crown or bridge marketed under that trademark.

13 10. Since learning about Glidewell Labs's BRUXZIR brand zirconia
14 crowns and bridges prior to March 2010 and through the date of this declaration, I
15 have, and continue to, strongly associate the BRUXZIR trademark with Glidewell
16 Labs's zirconia crowns and bridges and zirconia material because I have observed
17 that Glidewell has extensively promoted its zirconia crowns and bridges and
18 zirconia material under the BRUXZIR trademark.

19 11. I not only use Glidewell Labs's BRUXZIR brand zirconia crowns and
20 bridges to treat patients with bruxism, but I also use Glidewell Labs's BRUXZIR
21 brand zirconia crowns and bridges to treat patients without bruxism.

22 I declare under penalty of perjury under the laws of the United States of
23 America that the foregoing is true and correct. Executed this 16 day of November,
24 2012, at Lake Bluff, Illinois.

25 Alberto Tamez 11/16/12

26 Terence J. Michiels, D.D.S.
27 Terence J. Michiels, D.D.S.



DECLARATION OF TERENCE J. MICHIELS, D.D.S., ISO
PLAINTIFF'S MOTIONS FOR SUMMARY JUDGMENT
CASE NO. SACV11-01309-DOC(ANx)

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